Law Vol. 6

THE

IRENARCH:

Or,

JUSTICE of the *PEACE'*:

MANUAL.

Addressed to the Gentlemen in the Commission of the Peace for the County of Leicester.

Quibus modis fiat scientiâ perfectus *Irenarcha*, alii satis habuissent dicere; at nostra temeritas etiam mores ei conabitur dare, et assignabit officia.

Quintilian. XII. *Proem.*

By a Gentleman of the Commission.

To which is prefixed,
a Dedication to Lord Mansfield,
By Another Hand.

LONDON. MDCCLXXIV.

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To which is prefixed,
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LONDON. MDCCLXXIV.

To the RIGHT HONOURABLE

WILLIAM Lord MANSFIELD,

Lord Chief Juſtice of the King's Bench.

My Lord,

IT is a ſaying of Plato, and he is commended for it by Tully, that no citizen, not even the meaneſt, ſhould fail to promote the ſervice of the State he lives under, by ſuch ways and means as fall within his province. From this principle, and no other, I here preſent your Lordſhip with the following little piece. It is of the *fugitive* kind; one of thoſe minute, detached, volatile productions, which juſt emerge, continue viſible for a while, and then, if left to themſelves, vaniſh for ever into darkneſs and oblivion.

It has indeed been publiſhed already, but only within the precincts of a ſingle County: and the author hath not as yet thought fit to produce himſelf clearly to view. I ſuppoſe, he may have affected the ſhades of obſcurity, to ſcreen himſelf the better from that envy, which all attempts to amend mankind, be they ever ſo reaſonable

and well-tempered, are ſure to draw upon thoſe, who may think them worth amending. For to this, my Lord, the Men of *Letters*, how cheaply ſoever held by a diſſipated fooliſh people, are, in proportion to their conſequence, as much expoſed, as even the Men of *Buſineſs*. We have ſome inſtances of both kinds, ſtill amongſt us: I heartily wiſh, my Lord, that we had more.

But to proceed. The little production before us exhibits, not indeed the ſcience of Juſticing, as the Title may ſeem to promiſe, (*That* has been amply ſet forth by others) but only the neceſſary accompliſhments and manners of a Juſtice: and it is thought to ſuggeſt ſome uſeful and ſeaſonable hints to thoſe, whom it more eſpecially concerns. I have preſumed to think theſe hints ſeaſonable, ſince a wiſe and vigorous exertion of this ſubordinate Magiſtracy was never more wanted, than in the preſent forlorn and degenerate ſtate of our manners. The Engliſh, my Lord, are not what they were, in the days of their old honeſt plainneſs and ſimplicity: they are become a very licentious and a very unprincipled people: and it is not only in our Towns, but even in our Villages, that the mere Vulgar are with difficulty kept within any reaſonable bounds of ſubjection and order.

It ſeemed therefore expedient to reſcue this ſmall inſtrument of Reformation, if I may venture ſo to call it, from that neglect and even deſtruction, to which a local publication muſt unavoidably have ſubjected it, and to ſend it forth to the world at large: and it is dedicated to your Lordſhip, as to the Head of that Order, to whom it is addreſſed. This has not been done, my Lord, with any view to flatter you, much leſs to ſeek an occaſion of inſulting or abuſing you. Of this latter treatment you have had, in my humble opinion, abundantly more than enough: for you are doubtleſs a wiſe and able magiſtrate; nor, with all my unfeigned love and zeal for Liberty and the Conſtitution, can I perſuade myſelf, that you have any the leaſt formed deſign againſt either.

Your adverſaries indeed have charged you with this, and very vehemently too: one of them in particular, who ſigns himſelf *Junius*, "making no ſcruple to affirm, with the moſt "ſolemn appeal to God for his ſincerity, that "in his judgment you are, conſidering your "ſituation and abilities, the very worſt and moſt "dangerous man in the kingdom."[a] My Lord, I dare by no means be ſo poſitive, as this

[a] *Junius's Letters*, printed for Woodfall, 1772. *Lett.* 69.

writer: indeed I dread peremptory deciſions upon Political Affairs; perfectly aware, that we private men, who live at a diſtance from Courts, whatever ſagacity or diſcernment we may boaſt, muſt often ſcan the tranſactions of Government, and the Characters of Miniſters, darkly and confuſedly: and indeed, how ſhould it be otherwiſe, when the only light we have conſiſts of a few, faint, ſcattered rays of intelligence, which accidentally find their way into the remote obſcurity of a village?

And then, again, I do not know, who this *Junius* is: he may be ſome mighty perſonage, who ſtands upon high ground; who, by being able to peep over the ramparts and outworks of a Court, may ken what is doing even in the Cabinet; and who therefore may have better reaſons for affirming, than I can for denying, any thing relating to Men and Meaſures there. I am farther ſcrupulous about oppoſing, becauſe I greatly honour, this unknown author: I admire the uncommon force of abilities, with which he writes; as I love the ſpirit of virtuous liberty, with which he ſeems to be ſtrongly animated. Yet, whoever he may be, he will certainly give me leave to imitate his ſincerity; and, in conſequence, to declare as my moſt firm perſuaſion, that whatever your Lordſhip's cha-

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racter and principles may be in very deed, no ſeries of facts (for a *ſeries* it muſt be) hath yet been produced, on which ſo ſolemn an affirmation can juſtly be grounded. But, let us hear him farther, and ſee how he ſupports it.

" The Evidence of Law-Books, or the Opi-
" nions of Judges, he ſays, are not the Authori-
" ties, by which *Lord Mansfield* will abide. He
" aſſumes an arbitrary power of doing right;
" and, if he does wrong, it lies only betwixt
" God and his Conſcience." [b] Plutarch, I remember, ſpeaks of Philopoemen, and he ſpeaks it to his praiſe, as if Nature had given him ſuch uncommon talents for ruling, that he knew not only how to govern according to the Laws, but, when the public good required it, to govern even the Laws themſelves: ὐ κατὰ τὺς νόμυς, ἀλλὰ καὶ τῶν νόμων, ἄρχειν ἠπίςατο πρὸς τὸ συμφέρον. [c] Is this what *Junius* means by *aſſuming an arbitrary power of doing right?* — Again, in the letter to Lord Camden cited above, he urges that Lord " to ſupport the
" Laws of England againſt a wicked Judge,
" who makes it the occupation of his life to miſ-
" interpret and pervert them." [d] So that a *miſ-*

[b] *Letter* 68.

[c] In Flamin. et Philopoem. *Comparat.*

[d] *Lett.* 69.

interpretation and *perverſion* of the Laws, in order to ſubſtitute arbitrary power, is here aſſerted to be the object of your Lordſhip's labours: and this, I think, with the ſanction you gave to the Middleſex Election, by not oppoſing, but at leaſt acquieſcing under, if not by aſſenting to it, makes the bulk of the charge, which your adverſaries have brought againſt you.

As to the meaſures, that were taken at this Election, even ſteady ſober-minded men have been at a loſs to conceive, what plan or ſyſtem of policy you went upon, when, if you did not actually promote, you certainly muſt be thought to have been partial towards them. The Election was irregular, unpopular, and doubtleſs in your own opinion illegal: elſe you had unqueſtionably declared the contrary, which I never heard that you did. Nay, we rural Politicians, under every view in which we were able to place it, could not but think it highly impolitic.—To what principle, my Lord, ſhall we aſcribe this extraordinary *manœuvre* of the Miniſtry? Shall we recur to the *Ragione di Stato* of the Italians; or to the *great and pregnant principle of political neceſſity*, urged by the author of the *FALSE ALARM?*[e] But, what is this *Reaſon of State*,

[e] Pag. 18. 2d *edit.*

or

or this *principle of political neceſſity?* Why, in truth, neither more nor leſs, explain them as you will, than an aſſumed right to diſpenſe with the Laws, whenever they ſhall obſtruct the meaſures of a Prince or his Miniſters. Milton has called *Neceſſity* the *Tyrant's plea*; and ſuch a plea, however it may avail in the Court of a *Grand Monarque*, where, for the glory of the Prince, the People are to be inſulted as well as injured, muſt yet horridly diſgrace the very beſt of cauſes in a Country, and under a Government, conſtituted as ours is.

Methinks, it would have been better to have uſed the language of Demoſthenes; which, if it be not more ſatisfactory, is at leaſt more intelligible. That mighty Demagogue, finding it neceſſary to break an alliance betwixt Athens and Sparta, for the ſake of preſerving the ballance of power among the Græcian States, was urged by an objector with the injuſtice of the meaſure: to whom he plainly, and without mincing, replied, that "we ought indeed always to "have juſtice in view, and to make it the "rule of our conduct; nevertheleſs, that our "conformity to it ſhould conſiſt with the "public good, and the intereſt of the Com-

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monwealth." [f] Ageſilaus too might have been quoted upon this occaſion: that very Ageſilaus, who, though always magnifying juſtice as the firſt of virtues, could yet affirm, that "the tendency as well as nature of an action "ſhould be examined; that conſideration "ſhould be had, whether or not it was ad-"vantageous to the State; and, if it was, "that then it would be glorious to perform "it, even although againſt Law and Order." [g] Laſtly, the illuſtrious Ariſtides himſelf, who, from a conſtant and rigid adherence to the rule of right, obtained the title of *Juſt*, yet in meaſures to be taken for the ſervice of the State, was now and then heard to ſay, "this is not juſt, but it is profitable:" ἃ δίκαιον μὲν, συμφέρον δὲ τοῦτ' ἔστι. [h]

Here, my Lord, are great authorities, it muſt be owned, to warrant the violation of Law and Equity, whenever it ſhall be expedient for a Regency (that is, whenever a Regency ſhall be *in the humor*) ſo to do: and this, I ſuppoſe, is what is meant by *Reaſon of State* and *pregnant principle of political neceſſity*. But the great Maſters in Politics have been far from being

[f] Orat. *pro Megalop.*
[g] Plut. *in Ageſ.*
[h] Plut. *in Ariſt.*

unanimous upon this head: many denying, that ſuch a conjuncture can ever happen; that, though the wayward inclinations and humours of Princes, or the private and intereſted views of Miniſters, may ſometimes, yet that the welfare of Government or real good of a State never can, require a deviation from Juſtice and Equity. Polybius, who was certainly no contemptible man in theſe matters, has roundly maintained, that "Honeſty is in all caſes the "beſt and ſureſt policy:" and he thought it incumbent on him to avow this maxim; in oppoſition, as he tells us, to certain politicians of his time, who imagined, that State Affairs could not be conducted as they ſhould be, without fraud and male-practices; could not be adminiſtered rightly, without ſometimes offending againſt the rule of right.[i] Plato had laid down this principle long before: his Political writings every where inculcating, that all good Government muſt conſiſt in an inviolable attachment to Juſtice and Equity abroad, and in a rigid obſervance of the Laws at home. He has a tremendous paſſage, referring to the latter branch of the diviſion: for he denounces almoſt inſtant deſtruction to a State, "where

[i] Polyb. *Excerpt.* Lib. xiii. 1.

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"the Magiſtrates command the Laws, and not "the Laws the Magiſtrates;" as alſo ſtability and ſafety, under the reverſe.[k] A temporary—my Lord, a momentary—ſuſpenſion of the Laws may in the end be deſtructive to a State.[1] It eſtabliſhes a dangerous precedent; and precedents, as your Lordſhip well knows, are not ſtationary things. They do not ſtop where they begin. They are not things unto which you can ſay, "ſo far ſhall ye go, and no farther;" but rather, like rivers, which gradually grow deeper

[k] Εν ᾗ μὲν πόλει γὰρ ἂν ἀρχόμενος ᾖ καὶ ἄκυρος νόμος, φθορὰν ὁρῶ τῇ τοιαύτῃ ἑτοίμην ἔσαν· ἐν ᾗ δὲ ἂν δεσπότης τῶν ἀρχόντων, οἱ δὲ ἄρχοντες δοῦλοι τῷ νόμῳ, σωτηρίαν. *De Legib.* L. iv.

[1] It is very true, that Ageſilaus, though the juſteſt of Kings, did decree, that the Laws ſhould be ſuſpended for one day, and afterwards remain in full authority and force: but then he did not act *arbitratu ſuo*, but only as empowered by the Lacedæmonians themſelves. *Plut. in Ageſ.* When Lord Camden excuſed the illegality of the Proclamation, which he adviſed for the ſuſpenſion of the *Corn-Bill*, by ſaying, that it was only *a tyranny of forty days*, he did not ſtand upon ſo firm a bottom: and I am clearly of opinion with *Junius*, that, inſtead of aſſerting the legality of the Proclamation, he ſhould have ſaid, "My Lords, I know the Proclamation was "illegal: but I adviſed it, becauſe it was indiſpenſa-"bly neceſſary to ſave the kingdom from famine; "and

deeper and wider as they flow, will exſpatiate at length into a licenſe without bounds.[m]

Surely, my Lord, this Middleſex Election, of which we are ſpeaking, is a precedent of capital and dangerous importance; ſo capital and ſo dangerous, that if once it ſhould come to be followed, farewell to the Laws and Liberties of England. If the Election of Mr. Luttrel be admitted as good and valid, "the repre-"ſentation in Parliament does not depend upon "the choice of the Freeholders, and our exiſt-"ence as a free people is abſolutely at an end."[n] My Lord,—I may undoubtedly be miſtaken: but, far from believing with ſome, that you really adviſed, I cannot perſuade myſelf that you even approved of it. I can indeed conceive your ſituation and connections to be ſuch, that although you might know it to be an illegal ſtretch of power, yet you might not find yourſelf at liberty to oppoſe it. You might fancy,

"and I ſubmit myſelf to the juſtice and mercy of "my Country." *Junius's Lett.* 60.

[m] *Non ibi conſiſtunt exempla, unde cæperunt: ſed quam libet in tenuem recepta tramitem, latiſſime evagandi ſibi viam faciunt: et, ubi recto ſemel deerratum eſt, in præceps pervenitur.* Paterc. II. 3.

[n] *Lett.* 11*th.*

that

that you could not have oppoſed this *particular* meaſure, without diſturbing the *general* ſyſtem, in which you are embarked; without greatly diſconcerting, or even totally demoliſhing, the preſent machinery of Political Adminiſtration, which, whatever you may think of certain parts, you may deem it beſt to ſupport in the whole.

But, after all, my good Lord, why thus in fetters as it were; and not at liberty to act according to your own ſenſe of things? "I cannot figure to myſelf," ſays an anonymous writer, "a meaner or more pernicious perſon, "than a Chief Juſtice of the King's Bench, "with a great income for life, given him by "the Public, in order to render him independent, clandeſtinely meddling in matters "of State, privately liſtening to every inclination of every Miniſtry, and warping and "wire-drawing the plain letter of the Law, "in order to accommodate it to their inclinations, inſtead of purſuing the courſe of "eſtabliſhed precedents, inviolably, intrepidly, "and openly, without regard to Perſon or "Party.—I wiſh, ſays he, that ſuch a one, if "ſuch a one there be, may be dragged into "broad day-light, and branded for ever to

"the

"the lateſt poſterity." [o] So wiſh I, moſt heartily, my Lord; and, I flatter myſelf, without wiſhing any the leaſt harm to your Lordſhip. I have read indeed, in an ancient Hiſtorian, of an ordinance ſetting forth, that, if the King of the Country ſhould happen to be maimed or debilitated, the officers of his Houſe-hold were obliged to maim or debilitate themſelves in like manner. [p] As to our good and gracious King, I have never heard, that he is maimed or debilitated in any reſpect; and, if any of his ſervants or Miniſters are, we have no cuſtoms, no acts of conformity, which can oblige your Lordſhip to become ſo.

Are we to ſuppoſe with ſome, that the moment a man ſteps into the precincts of a Court, he is rapidly carried away with his Brother-Courtiers, to commit all manner of ſin and wickedneſs; and this by a vortex as it were, rolling round the center of Royalty, which involves them all in one common guilt?—The great unfortunate Raleigh ſeems to have entertained an idea of this ſort; as if iniquity was not accidental merely, but abſolutely eſſential, to the profeſſion of a Courtier. "I

[o] Letter concerning Libels, Warrants, and Seizure of Papers, pag. 83. 6th edit.

[p] Diodor. Sic. Lib. ii. *de Æthiop.*

"have

"have lived," ſays he, in his ſpeech from the ſcaffold; "I have lived a ſinful life, in all ſin-"ful callings, having been a ſoldier, a captain, "a ſea-captain, and a *courtier*; which are all "places of wickedneſs and vice." If I could believe this opinion to be well grounded, it would greatly lower my notions of the Divine Inſtitution of Government; of Monarchical Government, more particularly. While I have been meditating in the Drawing-Room upon a birth-day, a reverential awe, even bordering upon devotion, has gradually overſpread and arreſted all my powers: and this cannot ſeem ſtrange, while I conſider myſelf as it were on holy ground, and in the preſence of him, who repreſents the King of Kings. But, according to Raleigh, inſtead of the palace of a righteous monarch, I am to fancy myſelf rather in a kind of Pandæmonium; or upon that particular ſpot, where ſome of the moſt wicked Spirits in the Land are frequently aſſembled to work unrighteouſneſs: and where a man can no more preſerve his innocence and integrity, *quam bene olere, ſi in culina habitet.*

Upon the whole, my Lord, and not to loſe myſelf longer amidſt vain and fruitleſs conjectures, in labouring for a ſolution of what is really beyond my powers, I feel myſelf upon

this occaſion diſpoſed to pay ſome homage to your high abilities, by treating your conduct, reſpecting this memorable Election, as if it were a Myſtery; and by preſuming, in conſequence, that you had wiſe and good reaſons for what you did, though I am in no wiſe able to comprehend them.—Quitting therefore this particular point, which ſhews you rather as a Miniſter of State, let me paſs on to other inſtances of conduct, where you will be ſeen as a Man of Law: and this, in the ſame unconfined and deſultory way, which I have hitherto allowed myſelf in this Dedication.

Now the charge againſt you here, as already laid down, is, that you *miſinterpret* and *pervert* the Laws, the true and genuine guardians of our Liberties, in order to make way for an arbitrary and deſpotic ſyſtem of Government. I have ſaid above, that it muſt be a *ſeries* of facts, on which ſo general a charge can be juſtly grounded. Single detached facts will not ſuffice: for, and even *Junius* allows it, "the Laws may be "violated in particular inſtances, and groſsly "too, without any direct attack upon the "whole ſyſtem."[q] But the ſame writer precludes us from this plea of *ſingle facts*; and de-

[q] *Lett.* 37.

clares himſelf to "ſee, through your whole life, "*one uniform plan* to enlarge the power of the "Crown at the expence of the liberty of the "ſubject; and that to this object your "thoughts, words, and actions have been "conſtantly directed."[r] So that, according to him, we are to think neither more nor leſs of you, than Cato did of Cæſar, that you come *ſobrius ad rempublicam evertendam.*

My Lord, — I would willingly hope and truſt, that you have not violated the Laws in any even *particular* inſtances, knowingly and deliberately: but your misfortune ſeems to be, that men will not ſuppoſe in you a capability of erring. So much, ſo very much, is aſcribed to your abilities, that, if you have ever deviated from the Rule and Standard of Law, you are believed to have deviated, *non ex errore, ſed ex malitiâ*; not from miſtake, but premeditated depravity. You are treated thereupon, as if, being infallible, you need not have done wrong, unleſs you had ſo pleaſed: and this, I am ſorry to ſay, not by the vulgar only, who are *wont to aſcribe fortuitous events to malignant counſils*,[s] but even by the wiſer and better ſort. You

[r] *Lett.* 41.

[s] *Mos vulgo fortuita ad culpam trahere.* Tacit. Annal. iv. 64.

ſeem to be in a ſituation, ſimilar to that of an ancient Chief: "if ever man was ruined by "an high diſtinction of character," ſays Plutarch, "Alcibiades was: for the Athenians "had conceived ſo greatly of his Powers, "that, whenever he failed in any thing he "undertook, they conſtantly imputed it to "mere deſign." [t]

But this, I muſt maintain it, is dealing hard and injurious meaſure. Even in the heat of an oppoſition, the warmeſt perhaps that ever was made, to a moſt unpopular Miniſter in the laſt reign, it was acknowledged, that "the greateſt men are but men, and as "ſuch not exempted from human failings; "nor can they ſecure themſelves, at all times, "from overſights, impoſitions, and miſcarri-"ages." [u] Certainly: no man is either infallible or impeccable; and doubtleſs your Lordſhip has been guilty of *overſights*, doubtleſs you have been *impoſed* upon, doubtleſs you have at times *miſcarried*. But your adverſaries treat you, as if you were exempted from this common and inevitable lot of our nature. They will not, I ſay, allow you to be capa-

[t] In Alcib.

[u] *Craftſman*, N° 78.

ble of error; but inſiſt upon your being *always awake*, though we have ancient and reſpectable authority, that the greateſt of men are *ſometimes aſleep*. Will you put in your claim to this plea of human infirmity? It will not be granted, it will be denied, to you: and if you remonſtrate ever ſo loudly againſt this partial and unequal treatment, you will remonſtrate againſt ſtorm and tempeſt. "Your conſcience already tells you, "that you have ſinned againſt knowledge; "and that, whatever defence you make, con-"tradicts your own internal conviction." [w]

My Lord,—as I was far from meaning to abuſe you, ſo I as certainly do not mean to flatter you: yet, for my life, I cannot aſſent to this. I can, let me repeat it, conceive you to commit errors: I can ſuppoſe you inconſiſtent: yea, I can go farther; I can believe, that from prejudice and paſſion you may be carried occaſionally to do wrong. All this is human: but the other ſeems devoid of all reaſon and candor. Why muſt compleat unerring Knowledge on the one hand, and compleat unrelenting Depravity on the other, be aſcribed to any ſingle per-

[w] *Junius* to Lord Mansfield. *Lett.* 68.

ſon?

ſon? Mankind aſſuredly are not ſo formed: they are a mixture of qualities: and happy is He, whoſe good ſhall be found to overballance his bad. Addiſon, ſpeaking of the *Intellectual* part, delivers it as his opinion, and I own it is mine, that "if the minds of "men were laid open, we ſhould ſee but "little difference between the wiſe and the "fooliſh. Numberleſs reveries, extravagancies, "and vanities, paſs through both. The great "difference is, that the former knows how "to pick and cull his thoughts properly, "while the latter bolts out every thing at "random." [x] Why not reaſon thus of the *Moral?* there being indiſputably very ungracious principles or ſeeds in the compoſition of the very beſt men; whoſe reputation, as ſomebody has ſaid, proceeds oftentimes more from their ſkill in hiding bad qualities, than from any real diſplay of good ones.

In the mean time, my Lord, your adverſaries are inconſiſtent. *Now* they deſcribe you as of powers tranſcendent, knowing and pervading almoſt every thing, incapable of erring, and as a Being of an order ſupe-

[x] Spectator; N°. 225.

rior. *By and by*, while we are figuring to ourſelves an extraordinary perſonage, who contemplates pure nature through the medium of pure reaſon, and almoſt above the condition of humanity, we are ſuddenly preſented with another kind of figure, which they ſay reſembles you too; but ſo totally different from and incommenſurate with the former, that it ſeemeth impoſſible they can both belong to the ſame original. In this you appear, none of the Great Being juſt now repreſented, but a very minute diminutive mortal: a dupe to prejudices of the meaneſt kind, and to paſſions, which have the loweſt and moſt contemptible objects.

I allude, my Lord, to certain political principles, you are ſuppoſed to hold; for, to ſpeak plainly, your enemies affect to charge you with an attachment to the Pretender, whoſe image you are ſaid to carry ſecretly in your boſom, and whoſe perſon to reverence and adore. Under what particular mode this adoration is conducted, I have not as yet learned: whether according to the manner of Sylla formerly, who carried about him an image of Apollo, which he pulled out and hugged in the ſight of the ſoldiery, always before

before a battle: [y] or, as now his preſent Majeſty of Pruſſia worſhips the Northern Empreſs, whoſe picture hangs up in his Audience-Chamber. To this, "when encircled by his "Officers, he looks up, as we are told, with "that ſort of awe, with which a zealous Ca-"tholic regards his patron-ſaint, and talks of "her as a Being ſuperiour to mortality." [z]— Good and grateful man!—

But, my Lord, if this be really ſo, there muſt be ſomething extremely principled and conſcientious in your make. For it is plain you cannot think or act here from any of thoſe motives, which uſually influence men of the world: you muſt purſue the convictions of the heart. For why? You can never be greater ſurely, than in the Court of George III: it is part of your demerit, that, "while "you would fain be thought to take no "ſhare in Government, you are in reality "the main-ſpring of the machine." [a] You are therefore at the Head of the Miniſtry: you are alſo at the Head of the Law: ſo that what you are to get by a Revolution,

[y] Val. Max. l. 2.
[z] *Of the Preſent State of Poland.* lett. 3.
[a] *Junius lett.* 41.

or change of Perſons, I am altogether at a loſs to conceive.

Aware of inconſiſtency and contradiction here, others of your adverſaries, equally violent, but not ſo abſurd, have compromiſed the mattter as it were, by making a diſtinction. They allow, that you have indeed changed your Idol, becauſe Ambition made it neceſſary; but contend, that you have not quitted the Idolatry; that you have transferred your attachments, but ſtill retain your principles; in ſhort, my Lord, that you have diſcarded the perſon of the Pretender, but adhere as cloſely as ever to the dogmas of Jacobitiſm. Thus you are ſaid to hold Prerogative, Paſſive Obedience, Non-reſiſtance, Slavery: and, I ſuppoſe, they would have added, Popery too; but only that, in theſe bleſſed days of Philoſophy, the idea of Religion ſeldom intervenes. This they will have to be your idol: one of thoſe *Idola Specûs*, as my Lord Bacon terms them; and which he defines to be a ſyſtem of notions, ariſing from temperament, education, cuſtom, and fortuitous conjunctures [b].

[b] *De Augm. Lib. V.* But, I think, the term *Idol* has been changed by ſome later Philoſopher into that of *Hobby-horſe*.

What

What a very minute creature they make of your Lordſhip!—It is no injuſtice to ſay of party men in general, that they exert violent paſſions in favour of fooliſh prejudices: but—is the great Lord Mansfield, after all the ſtupendous things we have heard of him, not above prejudices of this and every kind? Is he one of thoſe, who ſhelter themſelves, for ſafety as it were, under a ſyſtem of opinions, as a ſnail is covered by her ſhell; or, to borrow *Shakeſpear*'s image, who *make their thoughts their priſons?* If you are *impriſoned*, my Lord, in the manner ſuppoſed, you are *impriſoned* by the moſt fooliſh ſyſtem of ideas, that ever were combined in the brain of man. But you muſt bear the imputation: and inſtances are not wanting to conſole you under the diſgrace of it. Bacon has been called a *ſmall wit*, and Locke a *ſuperficial Philoſopher*:[c] and, if Lord Mansfield ſhould paſs with ſome hereafter for a ſhallow lawyer and a weak man, it will only

[c] The Chevalier Ramſay expreſsly calls Locke *genie ſuperficiel, qui a écrit les Elemens de la Philoſophie, plutôt que ſes principes approfondis:* (Biograph. Britann. in RAMSAY, note E.) and if Bacon is not directly called a *little wit*, he is placed at the head of them by a writer of no leſs ingenuity and learning, than Monſ. Rapin. *Reflex. ſur la Philoſ. en general. VII.*

ſhew,

ſhew, as Monteſquieu has ſaid, that "the rank "or place, which poſterity beſtows, is ſubject, "as all others are, to the whim and caprice of "fortune [d]."

Mean while, I am diſpoſed to rank this charge of Jacobitiſm, as I do that of timidity, amongſt thoſe topics of invective, which are purely meant to diſparage your perſon, by making you contemptible as well as odious. The want of courage is, I think, more than once imputed to you, in terms of reproach, even by *Junius*; and yet, as it ſhould ſeem, that writer cannot lay any mighty ſtreſs upon this ſame quality: for, when it ſeemed expedient to take off a little of the luſtre from this unconteſted part of Lord Granby's character, he aſcribes it to a *total abſence of all feeling and reflection* [e].—A very great man, ſpeaking of *Valour* and *Reſolution*, as contra-diſtinguiſhed to each other, has obſerved, that "the firſt is common, even among "the vulgar: the ſecond, not only uncommon, "but more ſo, than can eaſily be imagined. "And yet, ſays he, ſtrength of mind is far "more neceſſary for great actions, than ſtout-"neſs of heart." It is the Cardinal de Retz,

[d] *Les places que la poſtérité donne ſont ſujettes, comme les autres, aux caprices de la fortune.* Grand des Rom. c. 1.

[e] Lett. 1.

who

who declares himſelf thus: [f] and the acknowledgement is the more extraordinary, as coming from a man, who perhaps was never exceeded in intrepidity and boldneſs of ſpirit. Take the advantage of it, my Lord: reply with firmneſs and vigour; and give your adverſary to underſtand, that, if you want the ferocious *courage* of the ſoldier, you have however the unſhaken ſtability and *reſolution* of the magiſtrate. Aſſert, farther, the honour—yea, the prerogative—of the Gown: *cedant arma togæ:* what's here to be done?——

The ſtile, the manner, and the matter of this addreſs have doubtleſs indicated long ago, that it was not ſo much meant for a Dedication to your Lordſhip, as for a vehicle to convey certain hints to the public, under the auſpices and ſanction of your Lordſhip's name. Hints will ſuffice for the purpoſe here in view: which is, not to treat things in detail and at large, but only to touch them in a ſummary way; not ſo much to teach men any thing of which they are ignorant, as to remind them of what they know. Under this idea, and upon this plan, let me be born patiently, while I mention a few of thoſe articles, which are reckoned among

[f] Memoires, Liv. 1.

our

our grievances in the Law; and which have ſomewhat unſettled your Lordſhip in the affections of the Engliſh.

The moſt general charge againſt you as a Lawyer is, that you aim "to change the King's "Bench, a Court of Common Law, into a Court "of Equity;" and that, "inſtead of thoſe cer-"tain poſitive rules, by which the judgment "of a Court of Law ſhould invariably be de-"termined, you have fondly introduced your "own vague notions of Equity and Subſtantial "Juſtice[g]." Whether this charge be true or falſe, it is the moſt ſingular and ſurpriſing charge, that ever was brought againſt a Lawyer. It has conſtantly been reproached to the men of this order, that they love to adhere to *Law*, in oppoſition to *Equity*; that they had rather kill by the *Letter*, than ſave by the *Spirit*; and that they always murmur, and ſometimes clamour, let Reaſon determine ever ſo rightly, if ſhe determines otherwiſe, than the law directs. Thus, I remember, the younger Pliny, in a caſe where Law and Equity claſhed, determined (as all men would, where they could) according to Equity: but tells you at the ſame time, how apprehenſive he was, leſt by ſo

[g] *Junius lett.* 61, 41.

doing

doing he ſhould draw upon him the diſpleaſure of the Lawyers. "Hoc, ſi jus accipias, irri-
"tum, ſays he: ſi defuncti voluntatem, ratum
"& firmum eſt. Mihi autem defuncti voluntas,
"*vereor quam in partem juriſconſulti quod ſum*
"*dicturus accipiant*, antiquior jure eſt [h].

A more recent inſtance will illuſtrate this matter ſtill farther. "The trials of Sir Wil-
"liam Friend, Sir William Parkyns, and others,
"on the Aſſaſſination-Plot, came on, after the
"proviſion of Counſel learned in the Law, not
"allowed before, had received the Royal Aſ-
"ſent, but before the Commencement of its
"operation. *I intreat*, ſaid Parkyns, *that I*
"*may have the allowance of Counſel: I have no*
"*ſkill in indictments: I do not underſtand theſe*
"*matters*; *nor what advantages may be proper*
"*for me to take. The new ſtatute wants but*
"*one day. What is juſt and reaſonable to-mor-*
"*row, ſurely is juſt and reaſonable to-day: and*
"*your Lordſhip may indulge me in this caſe.*"
But, ſays the humane author, from whom I tranſcribe this, "Holt, Chief Juſtice, was too
"good a Judge to ſuffer the ſtubborn principles
"of law to yield to the milder inferences of
"equity. *We cannot* (he replied) *alter the Law,*

[h] Epiſt. V. 7.

"*till*

" till Law-makers direct us: we must conform " to the law, as it is at present, not what it " will be to-morrow: we are upon our oaths so to " do[i]."

This, as far as I can learn, has ever been the temper and spirit of the Lawyers. They are angry when things are done, not only against forms, but even without them. They hate, we say, to have points judged and determined by Equity: why? not surely from any natural aversion to equity, (for how can this be peculiar to any order of men?) but from its tending to supersede Law. All orders hate, and ever will hate, whatever tends to destroy the Characteristics of their profession. Divines hate Morality, when opposed to Religion; as Physicians hate Regimen, when opposed to Medicine. The reason is, that Morality and Regimen, thus circumstanced, tend to set aside Religion and Physic; because they represent them, indirectly at least, as superfluous and unnecessary. And what can be more mortifying to a professor, than any thing which tends to shew, that his profession is an useless, and therefore probably a pernicious, burthen to society?

i Principles of Penal Law, ch. xv.

Human

Human Nature, upon this head, is uniform throughout. Pythagoras, we know, exhorted every man to reverence himſelf, as the beſt preſervative againſt doing any thing below, or unworthy of, himſelf: αἰχύνεο σαυτόν, ſays he, in the verſes called *golden*. Now a man's ſecond ſelf is his Profeſſion; nay, in truth, it is often his firſt ſelf: I mean, his natural character is not only diſcoloured, diſtorted, and diſguiſed, but it is ſometimes totally abſorbed and ſwallowed up, by his profeſſional character. No order of men have reverenced themſelves more as an order, than the Men of the Law. Sir Edward Coke, in his *Inſtitutes*, frequently takes occaſion to ſet out the learning and importance of the Lawyers: he calls them "the "ſages of the parliament; the very life and "ſoul of the King's Counſil." Sir John Forteſcue had expreſſed himſelf before in the like magnificent terms, and diſplayed with a kind of oſtentation the great advantages of ſtudying the Law, as well as the awful dignity and pomp of its profeſſors; and he "thinks it a peculiar bleſſing, that from amongſt "the Judges and their offſpring have ſprung "more Peers and Great Perſonages of the "Realm, than from any other order of men "whatever: which, ſays he, can never be aſcrib-

"ed

" ed to mere chance or fortune, that being no-
" thing, but ought to be attributed to the pe-
" culiar bleſſing of Almighty God, who by
" his prophet hath declared, that *the genera-*
" *tion of the upright ſhall be bleſſed* [k]." From which remarkable paſſage theſe two corollaries manifeſtly

[k] *De laudibus Legum Angliæ*, cap. 51. All this is ſupported and confirmed by Sir Edward Coke, in the *Preface* to his Second *Report:* mean while, it muſt not be diſſembled, that others have not ſeen the Law in this reſpectable light. " To inveſtigate a queſtion of Law," ſays a writer often quoted, " demands ſome labour and " attention, though very little genius or ſagacity. As a " practical profeſſion, the ſtudy of the Law requires but " a moderate portion of abilities. The learning of a " Pleader is uſually upon a level with his integrity. The " indiſcriminate defence of right and wrong contracts the " underſtanding, while it corrupts the heart. Subtlety is " ſoon miſtaken for wiſdom, and impunity for virtue. " If there be any inſtances upon record, as ſome there " are undoubtedly, of genius and morality united in a " Lawyer, they are diſtinguiſhed by their ſingularity, and " operate as exceptions." *Junius lett.* 68. So the ſarcaſtical Dean of St. Patrick's ſpeaks of the Law, very injuriouſly we will hope, when he mentions it as " a ſort of know-" ledge, which, however poſſeſſed in the higheſt degree, " can poſſibly *give no one good quality to the mind.*" But this did not paſs without notice from a writer, who calls it " a very ſtrange aſſertion:" and who, after having learnedly ſhewn the contrary, refers " for the beſt proof " of its moral efficacy to the manners of its profeſſors;

manifeſtly ariſe: firſt, that exaltation to a Peerage is a bleſſing from Heaven; and, ſecondly, that this bleſſing may be obtained by juſtice and uprightneſs in the profeſſion of the Law. And if this honeſt Chancellor's reaſoning be good, as no doubt it is, we are led to think highly of our preſent Chiefs in the Law, and of your Lordſhip among them; ſince it is plain, that the practice of it is in our times, as it was heretofore, the road to Peerages and Preferment.

If therefore reverence for a Profeſſion ſecures in the beſt manner from acting againſt it, "can "we believe it poſſible, that a learned Judge "can act in direct contradiction to thoſe laws, "which he is ſuppoſed to have made the ſtudy "of his life, and which he is ſworn to ad-"miniſter faithfully?"[1]. Can we believe, that a learned Judge, who has riſen to Wealth and Honors by the Law, ſhould make it his ſtudy to pervert and deſtroy the Law? Surely, ſuch a one muſt be conſidered by his brethren

" which, in every age, have been ſuch, *as were the firſt* " *improved, or the laſt corrupted.*" So ſaith the Right Reverend Commentator upon Pope; and the Lord ſend, that what he hath ſaid may be true. Pope's Works Vol. IX.

[1] *Junius, lett.* 68.

as guilty of the crime of *leſe Majeſty* againſt it; and would, I ſhould think, be hiſſed out of the Courts, as a traitor to his profeſſion.—Beſides, I am the more backward in imputing a violation of the Laws to a Chief Juſtice of the King's Bench, becauſe I recollect, that one of our Kings (was it not Edward the Third?) cauſed this very Magiſtrate to be hanged for this very crime; alledging for a reaſon, that "*He*, being entruſted as his Deputy to adminiſter juſtice in that Court, "had, by offending againſt it, broken, as "much as in him lay, the ſolemn oath, "which his Majeſty made to the People at "his Coronation."

Forcible as this is, your adverſaries affect to evade it all. They contend, that you cheriſh a principle, deeply rooted in your natural frame and temperament, which quite overrules any ſuperinduced artificial love for your Profeſſion: I mean, my Lord, that your regard for the Laws is born intirely down by a violent paſſion for arbitrary Government; the introduction of which is, they ſay, the very idol of your ſoul. And hence it is, I ſuppoſe, that we hear you charged "with "contemning the Common Law of Eng-

"land; with introducing into the Court, "where you preſide, maxims of Juriſprudence "unknown to Engliſhmen; with extolling the "Roman Code, the Law of Nations, and "the opinions of foreign Civilians; and with "ſilence about Magna Charta, or the Bill "of Rights."[m] Without doubt, my Lord, if Deſpotiſm were your object, the Civil Law would be extremely *a propos*; one of its principal maxims being, that "whatever "hath pleaſed the Prince, has the force of a "Law:"[n] which is rather more compendious, than the rule of a notable Britiſh King, who ſaid, that, "as long as he could make Bi-"ſhops and Judges, he would have what "Law and Goſpel he pleaſed." To be ſure, my Lord, ſuch bleſſed maxims as theſe would prevent much altercation, and put a ſtop to much chicanery, in Weſtminſter Hall and other places: but as the Laws of England are utterly averſe from principles ſo ar-

[m] *Junius, lett.* 41.

[n] *Quod principi placuit, legis habet vigorem.* Ulpian.—It was one of the articles of impeachment againſt Cardinal Wolſey, *quod ipſe intendebat finaliter antiquiſſimas Anglicanas leges penitus ſubvertere, et hoc regnum Angliæ legibus civilibus et canonibus ſubjugare.*

bitrary, and as our Kings by their Coronation-Oaths are bound to obſerve theſe Laws, it would be a very weak as well as a very wicked attempt, in any ſingle man or in any body of men, to introduce and eſtabliſh ſuch principles here.

Another charge againſt your Lordſhip is, that you mean to deſtroy the liberty of the Preſs: which is preſumed to appear from your virulent and relentleſs proſecution of Libellers.—With regard to Libels and Libellers, much has been ſaid, and much has been done; and it may have been done legally, ſo far as I know. But I muſt be free to wiſh that the great perſonages of the realm, and your Lordſhip among them, would not be quite ſo tender-fibred and irritable, with regard to what is ſaid or written about you.

The famous Reformer Calvin told Francis I. that "there would be no ſuch thing as "innocence, either in words or deeds, if a "ſimple accuſation was ſufficient to deſtroy it:" *nullam neque in dictis, neque in factis, innocentiam fore, ſi accuſâſſe ſufficiat.* ° Now, my Lord, if this be really ſo, as I verily be-

° In Dedicat. Inſtitut.

lieve

lieve it is: if cenſorious criticiſm, detraction, and calumny, muſt more eſpecially accompany men, engaged in the turbid ſphere of active life; and if nothing can ſecure from theſe, but imbecillity, inſignificancy, indolence, or obſcurity,—of all which I am moſt firmly perſuaded,—what is ſatire and abuſe? no criterion, ſurely, of innocence or guilt: nothing, or it may be nothing, but the fermentations and ebullitions of human prejudices and human paſſions.—Beſides, my Lord, you need not be reminded, that the Proſecution, or (which they will always call it) the Perſecution, of Libellers, can never produce any other effect, but to give weight and conſequence to both the Libel and the Libeller: that of Tacitus being univerſally true, *punitis ingeniis gliſcit auctoritas.* Nay, there is no occaſion for *ingenuity*, if Tacitus means that, to give a luſtre to the Proſecution: ſince nothing is more frequent, than that writers of neither ſenſe, nor genius, nor learning, nor honeſty, become, by being proſecuted, poſſeſſed of them all.

Philoſophers have from time to time held out to poor ſufferers in this way (I mean, to thoſe who have wept under the ſmart of ſatire) certain *medicamina mentis*, certain ſpecifics to render the mind callous and in-

ſenſible to this ſort of correction; and one of them, I think, preſcribes the following *Recipe*: "whenever you labor under defama-"tion, or whenever any thing falſe is re-"ported to your diſcredit, conſider, that it "is not *You*, but ſome imaginary Perſonage, "to whom the imputed infamy belongs." But this ſeems nothing near ſo efficacious, as the virulence and malignity of the caſe may require. For if a man, miſtaking in the dark, ſhould fall upon the ſhoulders of another with a cudgel, would the impreſſions be leſs forcible, or the ſenſations leſs lively, becauſe he might not be the perſon, for whom the favor was intended? There is more good ſenſe, if not ſo much ſubtilty, in the ſaying of Auguſtus; who, when urged by his ſon-in-law to purſue this race of Scribblers, replied, "don't indulge a ſpirit of reſentment "againſt theſe our adverſaries; it is quite "ſufficient, that we are not in a ſituation "to be hurt by any one:" *ſatis eſt, mi Tiberî, ſi hoc habemus, ne quis nobis malè facere poſſit.* [P] But neither does this intirely pleaſe me: for, firſt, this Emperor derived his boaſted ſecurity from Uſurpation and

[P] Sueton. in Aug. 51.

Tyranny;

Tyranny; and, then, he afterwards became himſelf a ſevere proſecutor of libellous productions. The example of Timoleon is more perfect in its kind. This wiſe and virtuous man, being wrongfully accuſed in an Aſſembly of the People, inſtead of reſenting or even taking it ill, thanked the immortal Gods for granting what he had ſo often prayed for; which was, that "the Syracuſans might have the liberty of ſpeaking what, and of whom, they would, with impunity." [q] This example is, I ſay, more perfect; but then, my Lord, it is too perfect for the age we live in: it is above the ſtrength of men, as men are now; αἷα νῦν βροτοί ἐσιν. I chuſe therefore, upon the whole, to recommend the behaviour of the Emperor Conſtantine, who, being importuned to puniſh ſome ſeditious perſons, for diſfiguring his ſtatues by throwing ſtones at them, did nothing more than calmly ſtroke his face, and tell his friends with a ſmile, that he *did not perceive himſelf to be hurt.* [r] All calumniators ſhould be treated with equal contempt: and with regard to yourſelf, my Lord, if you really are calumniated, ſhew a forti-

[q] Nepos in Timol. [r] *Homil.* Chryſoſtom. 20.

ſenſible to this ſort of correction; and one of them, I think, preſcribes the following *Recipe*: "whenever you labor under defama-"tion, or whenever any thing falſe is re-"ported to your diſcredit, conſider, that it "is not *You*, but ſome imaginary Perſonage, "to whom the imputed infamy belongs." But this ſeems nothing near ſo efficacious, as the virulence and malignity of the caſe may require. For if a man, miſtaking in the dark, ſhould fall upon the ſhoulders of another with a cudgel, would the impreſſions be leſs forcible, or the ſenſations leſs lively, becauſe he might not be the perſon, for whom the favor was intended? There is more good ſenſe, if not ſo much ſubtilty, in the ſaying of Auguſtus; who, when urged by his ſon-in-law to purſue this race of Scribblers, replied, "don't indulge a ſpirit of reſentment "againſt theſe our adverſaries; it is quite "ſufficient, that we are not in a ſituation "to be hurt by any one:" *ſatis eſt, mi Tiberî, ſi hoc habemus, ne quis nobis malè facere poſſit.* [P] But neither does this intirely pleaſe me: for, firſt, this Emperor derived his boaſted ſecurity from Uſurpation and

[P] Sueton. in Aug. 51.

Tyranny;

Tyranny; and, then, he afterwards became himſelf a ſevere proſecutor of libellous productions. The example of Timoleon is more perfect in its kind. This wiſe and virtuous man, being wrongfully accuſed in an Aſſembly of the People, inſtead of reſenting or even taking it ill, thanked the immortal Gods for granting what he had ſo often prayed for; which was, that "the Sy-"racuſans might have the liberty of ſpeak-"ing what, and of whom, they would, with "impunity." [q] This example is, I ſay, more perfect; but then, my Lord, it is too perfect for the age we live in: it is above the ſtrength of men, as men are now; οἷα νῦν βροτοί εἰσι. I chuſe therefore, upon the whole, to recommend the behaviour of the Emperor Conſtantine, who, being importuned to puniſh ſome ſeditious perſons, for diſfiguring his ſtatues by throwing ſtones at them, did nothing more than calmly ſtroke his face, and tell his friends with a ſmile, that he *did not perceive himſelf to be hurt.* [r] All calumniators ſhould be treated with equal contempt: and with regard to yourſelf, my Lord, if you really are calumniated, ſhew a forti-

[q] Nepos in Timol. [r] *Homil.* Chryſoſtom. 20.

tude of ſpirit in deſpiſing it, as you ought; ſummon up ſome *reſolution*, (there is no occaſion for *courage*) and aſpire to the merit, which Plutarch aſcribes to Pericles and Fabius; who, he ſays, "effectually ſerved their "reſpective Commonwealths, by bearing with "moſt exemplary patience the capricious "and injurious treatment of their Collegues "and Countrymen." [s]

As to the liberty of the Preſs, *Junius* calls it "the Palladium of all the Civil, Politi-"cal, and Religious rights of an Engliſh-"man," to which I readily aſſent; and he contends, that "no particular abuſes ought, in "reaſon and equity, to produce a general "forfeiture, or to aboliſh the uſe of it." [t] I ſhall loſe no time in deſcanting, whether they ought or ought not: perſuaded am I ſincerely, that, if our preſent manners hold, they moſt aſſuredly *will*: for, as a certain writer has ſaid very truly, "never did an "envenomed ſcurrility againſt every thing ſa-"cred and civil, public and private, rage "throughout the kingdom with ſuch a fu-"rious and unbridled licenſe." [u] But take

[s] In Pericle. [t] Dedicat. & Pref. and Lett. 61.

[u] *Thoughts on the cauſes of the preſent diſcontents*, p. 77. 3d edit.

warning,

warning, my good Countrymen; and deceive not yourſelves. When the Preſs ridicules openly and barefacedly the moſt revered and fundamental doctrines of Religion: when the Preſs, in Political Matters, attacks Perſons without any regard to Things, or perhaps ſometimes attacks Things for the ſake of abuſing Perſons: when the Preſs not only wantonly aſſaults the firſt characters in Church and State, but even ſacrifices the peace and quiet of private families to the ſport and entertainment of an ill-natured public: — and is it not notorious, that all this has been, and daily is, done?—then, I ſay, this noble, reaſonable, and manly liberty is degenerated into a baſe, unwarrantable, cruel licentiouſneſs; and this licentiouſneſs, determine as logically, and contend as loudly, as you pleaſe, will, by an unavoidable conſequence flowing from the nature and conſtitution of things, ſooner or later bring about its deſtruction. Things are ſo formed, that extremes muſt ever beget, and prepare the way for, extremes. Abuſes of every thing muſt deſtroy the uſe of every thing: and if the people grow *licentious* and ungovernable, it is as natural, perhaps as neceſſary, for their rulers to increaſe their reſtraint, and abridge

abridge their *liberty*, as for an horſe-breaker to tighten the reins, in proportion as his ſteed ſhall ſhew an impatience to be managed.

It has been ſaid, that without freedom of thought there can be no ſuch thing as wiſdom, nor any ſuch thing as liberty without freedom of ſpeech: and, becauſe the latter is true in a qualified ſenſe, and under certain limitations, the authority of Tacitus has been abſurdly and even ſtupidly obtruded, as a warrant to take off all reſtraint, and allow ourſelves an unbounded licenſe, as well in ſpeaking as in thinking. "Rare and happy times, ſays he, when a man may think what he will, and ſpeak what he thinks:" *rara temporum felicitas, ubi ſentire quæ velis, et quæ ſentias dicere, licet:* [x] Rare and happy times indeed! But pray, dear Gentlemen, what times were thoſe, or who has read of any times, when men were not at liberty to *think as they would?* A man may *think as he pleaſes* in the worſt times, as well as in the beſt, becauſe Thought, as is commonly ſaid, is at all times free: but can a man at any time, or under any Go-

[x] Hiſt. l. 1.

vernment,

vernment, even the beſt, be allowed the liberty of *ſpeaking what he pleaſes*, of communicating himſelf up to the ſtandard of his ideas? May every man ſpeak of every man, what, for inſtance, the ſpleen of humor, or the caprice of imagination, ſhall happen to ſuggeſt? My Lord, theſe people know as little of Tacitus, as they do of Society, and what it will bear. "If life remains," ſays he, "I have reſerved, for the employment "of my old age, the reign of the deified "Nerva, with that of the Emperor Trajan; "a work more copious, as well as more "ſafe: ſuch is the rare felicity of theſe "times, when you are at full liberty to en-"tertain what ſentiments you pleaſe, and to "declare what ſentiments you entertain." *To declare what ſentiments you entertain:* yes, but of whom, or what?—not of every man you meet, nor indeed of every thing that happens: Tacitus underſtood human affairs in a different manner: but—of thoſe particular reigns, in oppoſition to ſome former tyrannical reigns; when men, far from ſpeaking out, durſt ſcarcely truſt themſelves even with their own thoughts.

It is remarkable, that the freeſt thinkers as well as the freeſt ſpeakers have never allowed

lowed ſuch a licenſe in Theory, whatever themſelves may have taken in Practice. Let "us ſeek truth," ſays Lord Bolingbroke, but "ſeek it *quietly* as well as freely. Let us "not imagine, like ſome who are called Free-"thinkers, that every man, who can think and "judge for himſelf as he has a right to do, has "therefore a *right of ſpeaking*, any more than "of acting, according to the *full freedom* of his "thoughts. The freedom belongs to him as "a rational creature: he lies under reſtraint as "a Member of Society.—We may communi-"cate our thoughts only ſo, as it may be done "without offending the Laws of our Country, "and diſturbing the public peace." [y] And if this be true about Things and Opinions, ſhall it not be ſo *a fortiori*, when applied to Perſons and Characters? Muſt a Philoſopher be circumſpect and guarded, when treating of abſtract propoſitions, or diſcuſſing ſpeculative points, which not one in ten thouſand knows any thing of; while every low, malicious, unprincipled wretch ſhall be permitted to ſcatter firebrands indiſcriminately in Society, and vomit out ſcurrility and abuſe, without juſtice and without meaſure? Will any man ſay, that *the laws of our*

[y] Philoſophical Works.

country

country are not offended, and *the peace of ſociety diſturbed*, more in the latter caſe, than in the former?—I know it will be aſked, where will you draw the line of diſtinction? how aſcertain the point, where Liberty ends, and Licentiouſneſs begins? and I ſhall in this, as in many other caſes, allow the extreme difficulty of reducing human affairs to any degree of preciſion and exactneſs; but I believe nevertheleſs, that, unleſs ſome expedient can be hit upon to correct the very atrocious abuſe of the Preſs, the deſtruction of its uſe will be found unavoidable.

As to any *formed* deſign againſt the liberty of the Preſs, I can not ſuffer myſelf to be at all apprehenſive of it: it is of more uſe and importance to a King of Great Britain, than (if poſſible) to any of his ſubjects; and this alone ſuffices with me to ſtifle and keep down every riſing jealouſy. In abſolute deſpotic Governments, where the Will of the Prince is the Law of the Country, where all Things are adminiſtered by force and arms, and where the glory of the *Grand Monarque* is the ſole end and object of the Monarchy, it matters not much for him to know, what the condition of his ſubjects is, and what they ſay or think about him: but in a qualified and limited Monarchy, like ours, where the King is no more than the firſt Magiſtrate appointed

by

by the people, where he is as bound to obey the Laws as the meaneſt of his ſubjects, and where the well-being of theſe ſubjects is the ſole end of his appointment—ſurely to ſuch a Prince it muſt be of the laſt conſequence to know, as minutely as he can, what is doing in every corner of his kingdom; what the ſtate and condition of his ſubjects; whether they enjoy plenty, proportioned to their induſtry; and whether, in ſhort, the end of his Kingly Government be in every reſpect anſwered? All this, I ſay, and more, a King of Great Britain muſt know as he can: but—how muſt he know it?—

A King, let his *diſcernment of ſpirits* be what it will, let him pry ever ſo acutely into the heads and hearts of thoſe about him, will never be able to pierce thro' the manifold diſguiſes, which Courtiers always know how to wrap themſelves in. By Courtiers are not meant thoſe gaudy painted images, which flutter about a Palace, and are really nothing more than the moving furniture of it; but thoſe, who are entruſted with the great offices, to whom the adminiſtration of affairs is committed, and who for the moſt part manage and direct the reins of Government as they pleaſe. And as he cannot diſcover, by any natural ſagacity in *himſelf*, the latent principles of things, any more than

the

the real characters of perſons; ſo he muſt not expect to receive any *effectual* information from *others*. For, I ſuppoſe, it will be no ſatire upon any particular Court, that now is, or ever was, to ſay, that there never was a Prince, who was told by any of his ſervants all thoſe truths, which it concerned him to know. At leaſt this is a propoſition I take to be ſo well grounded, that I do not think the ſevere plain-dealing of a Clarendon, or the honeſt bluntneſs of a Sully, ſufficient to form an exception to it. The Emperor Diocletian made the difficulty of reigning well, to conſiſt chiefly in the difficulty of arriving at the real knowledge of affairs. "Four or five Courtiers, ſays he, form them-"ſelves into a cabal, and unite in their coun-"ſils to deceive the Emperor. They ſay, what "will pleaſe their Maſter: who, being ſhut up "in his Palace, is a perfect ſtranger to the real "truth; and is forced to know only, what "they are pleaſed to tell him[a]."

Now this great hindrance to good Government, as Diocletian juſtly thought it, is almoſt, if

[a] *Diocletianus dixit, nihil eſſe difficilius, quam bene imperare. Colligunt ſe quatuor vel quinque, atque unum conſilium ad decipiendum Imperatorem capiunt. Dicunt, quid probandum ſit. Imperator, qui domi clauſus eſt, vera non novit: cogitur*

if not altogether, removed by the glorious privilege of the Britiſh Conſtitution, of which we are ſpeaking, *the liberty of the Preſs*. By means of this, the loweſt ſubject may find acceſs to the Throne; and, by means of this, the King has a key, if I may ſo call it, to all manner of intelligence: nor is there any thing, of the leaſt importance to Government, of which his Majeſty can long remain uninformed and ignorant, unleſs he wilfully and obſtinately ſhuts his eyes. It is not meant, that he ſhould ſuddenly adopt as real truth and matter of fact every thing, which may be read in the public prints: and many perhaps may think, that amidſt ſo much miſrepreſentation and error, ſo much partiality and diſguiſe, ſo much indiſcriminate ſcurrility and abuſe, he can hardly depend upon any thing at all, or take any meaſures from ſuch a chaos of truth and falſehood. But of this chaos, were it ten times more ſo, it is indiſputably certain, that very much uſe and very many advantages may be made. The King may be directed to find things, which he would never

cogitur tantum hoc ſcire, quod illi loquuntur. Vopiſcus in Aureliano. —— "Princes, ſays Ben Jonſon, learn no "art truly, but the art of horſemanſhip. The reaſon is, "the brave beaſt is no flatterer: he will throw a Prince, "as ſoon as his Groom." *Diſcoveries.*

have

have thought of looking for: more than glimmerings will ever and anon appear, which will enable him to puſh his diſcoveries far, and to trace many things to their ſource, which would otherwiſe have lain hid from him. In ſhort, from theſe public intelligencers, ſome things will be hinted, others ſpoken out more freely, and others preſented in their full glare: and thus, upon the whole, all concerns of moment, relating either to Perſons or Things, will be ſufficiently unfolded, and laid open before him.

Wicked and ſelfiſh miniſters know all this ſo well, that we have often heard of great management, in corrupt Courts, to ſtop up theſe channels of intelligence to the Prince. They know, that by them a conſtant commerce, correſpondence, and union as it were, are maintained between the Prince and his People. They know, that while theſe are ſo maintained, they vainly attempt to cabal, and to impoſe upon their Maſter; and, if notwithſtanding they will not tell him all the truth they ſhould, yet they dare not abuſe him groſsly with miſrepreſentation and lies. Why? becauſe diſcovery is inſtantly at hand, and becauſe diſgrace and ruin will tread upon the heels of it. So that, all things laid together, the advantage to the Sovereign from the liberty of the Preſs is my great ſecu-

rity for the continuance and preſervation of it; and, if your Lordſhip has any deſigns againſt it, which I am far from affirming, you can never ſucceed, while the King knows his true intereſt, and purſues the well-being and happineſs of the people, as the ſole end and object of his reigning.

Another charge againſt your Lordſhip is, that "you invade the Conſtitutional Power of Ju-"ries, by confining their judgment to the *mat-*"*ter of fact*, and not ſuffering them to touch "upon the *matter of law*." [y] Their power is indeed an eſſential part of our conſtitution, the trial *per pares* being expreſsly ſpecified in *Magna Charta:* yet an author, very learned in the Law, "conceives, that this was meant chiefly to re-"late to the trial of the Barons by their Peers; "though it hath, fortunately for the liberties of "this Country, been expounded to extend to "the trial of all perſons by a Jury." He thinks, that a French Law, by which "all Nobles "were to be tried *par leurs pairs*," made near the time of our *Magna Charta*, and by perſons of the ſame order, namely, the Nobles and Barons in both kingdoms, may rightly be conſi-ſidered as expoſitory of the Engliſh. [z] How-

[y] *Junius, paſſim.*

[z] Barrington's *Obſervat. on Ancient Statutes*, p. 29. *3d edit.*

ever, be their power ever ſo ancient, or ever ſo conſtitutional, there are not wanting perſons to ridicule and condemn it. The Scythian Anacharſis, having ſeen the Orators haranguing the People at Athens, expreſſed his ſurpriſe, that "wiſe men pleaded cauſes in Greece, but that "fools determined them."[a] Some think it equally abſurd, that ſuch ſort of perſons, as uſually compoſe our Juries, ſhould be made Judges in *matters of law*; and would, I ſuppoſe, with your Lordſhip, confine their Judgment to the *matter of fact*.

It is certain, that this notion of Juries, whether well or ill grounded, is by no means new. —It is remarkable, that all our Law-books inſiſt upon this, as the prime and eſſential qualification of a Juryman, that he be choſen out of the *Viſne*, that is, vicinage or neighbourhood; *de vicineto, ubi factum ſupponitur*, ſays Fortescue;[b] becauſe, as they write, *vicinus facta vicini præſumitur ſcire:*[c] but ſay little or nothing of his qualifications in Law; and therefore include only half the idea of a Juryman according to thoſe, who will have him a Judge of *Law* as well as *Fact*.—There is a paſſage in

[a] Plut. in Solon. [b] *De laud. leg.* c. 20. [c] Hawkins's P. C. II. 23.

Bracton, which ſeems to ſhew, that, in Henry the Third's time, it was the duty of the Judge to controul the verdict of the Jury: *ſed, cum ad judicem pertineat juſtum proferre judicium, oportebit eum diligenter examinare, ſi dicta juratorum in ſe veritatem contineant, et ſi eorum juſtum ſit judicium, vel fatuum; ne, ſi contingat judicem eorum dicta ſequi et eorum judicium, ita falſum faciat judicium et fatuum.*[d]—Lord Clarendon declares himſelf explicitly of opinion, that the Jury are not to judge of the *Law*; and ſpeaks contemptuouſly of Hobbes, for making them Judges of *Law* as well as *Fact*[e]. I ſhould not, I confeſs, have ſuſpected Hobbes of any biaſs, in favor of the People or their Privileges; and if he has any where expreſſed himſelf inconſiſtently with his general ſyſtem, ſo it is: but he certainly ſays, that "theſe twelve men, the "Jury, are no Court of Equity or of Juſtice, "becauſe they determine not what is juſt or "unjuſt, but only whether it be done or not "done: and their judgment is nothing elſe, "but a confirmation of that, which is properly "the judgment of the witneſſes."[f] Laſtly, the excellent Monteſquieu, if I underſtand him,

[d] Lib. IV. c. 19. [e] *Survey of Leviathan*, p. 129.
[f] Works, p. 598. *edit.* 1750.

had

had the ſame notion of our Juries: "in Eng-
"land, ſays he, the Jurors decide, whether or
"no the Accuſed be guilty of the *fact* brought
"before them." [g]

Nevertheleſs, Littleton in his *Tenures* expreſsly ſays, that, "if a Jury will take upon "them the knowledge of the *Law* upon the "matter, they *may*:" [h] to which Lord Coke agrees, in his comment thereupon. And indeed it is not eaſy to conceive, how theſe twelve men can properly bring in a verdict, (that is, can pronounce a man *guilty* or *not guilty*) without being judges of the *Law* as well as of the *Fact*: becauſe a combination of both theſe ideas is neceſſary to aſcertain and fix the idea of a *Crime*. Sir Thomas Smith, in his *de Republica Anglorum*, has the following paſſage in his chapter upon Juries: *quamprimum juriſjurandi religione obſtringuntur Duodecemviri ad facti veritatem dicendam, tum juriſperiti* facti ſpeciem *aperiunt*:—*ubi res teſtibus confirmata, judex ſub verborum compendio propoſita a jureconſultis in utramque partem argumenta Duodecemviris alte a capite repetit*:

[g] *En Angleterre, les jûres décident ſi l' accuſé eſt coupable ou non du fait, qui a été porte devant eux.* L' Eſprit. VI. 3.

[h] Sect. 386.

teſtium dicta commemorat: rurſuſque facti ſpeciem *inculcat.*[i] The *ſpecies facti*, the nature, the *ſpecific* nature, of the fact, is, we ſee, fully and accurately ſet forth to the Jury: and with reaſon; for without knowing the nature as well as certainty of the fact, how ſhall they judge of its legality or illegality, its criminality or its innocence? and, without theſe, how bring a verdict, or pronounce about *guilt?*[k]

I hope, this biaſs in your Lordſhip againſt Juries does not flow from any contempt of the people of England; and yet I am not upon this head intirely without my fears, becauſe the people of England have indeed been contemned; I mean, my Lord, their voice has not been enough regarded in the Affairs of the Nation. It deſerves to be recollected, that the Writ of Summons to the Parliament of the 23d of Edward I. is conceived in theſe terms: "The King to the "Venerable Father in Chriſt R. Archbiſhop "of Canterbury, greeting: As the moſt juſt "Law, eſtabliſhed by the provident wiſdom "of Princes, exhorts and appoints, that *what*

[i] Lib. 11. 18.

[k] See a piece, intitled *The Engliſhman's Right, or a Dialogue about Jurors, &c.*

"*concerns*

"*concerns ALL, ſhould be approved by ALL*; "ſo it evidently ſuggeſts, that dangers *com-* "*mon to all* ſhould be obviated by remedies "*provided by all.*" This contempt of the People hath been animadverted upon, and this Writ of Summons recommended to notice, not very long ago: and ſorry am I to think, that there ſhould be a propriety in doing it ſo ſoon again.

In the mean time this *vox populi*, or voice of the people, is not to be confounded with the ſenſeleſs clamor and ſtupidity of the populace: nor would I be thought to blame your Lordſhip, or any other great perſonage, for not attending to an ignorant, unprincipled, licentious mob; who, far from deciding upon meaſures of Government, can ſcarcely be able to decide upon any thing at all. No, by the people of England I underſtand the landed gentry, the conſiderable traders, the ſubſtantial freeholders, and all who hold the middle rank of life: and theſe, my Lord, aſſure yourſelf, are by no means below, or unworthy of, your notice. It has long been an axiom, that the moſt inconſiderable perſons may, at ſome conjunctures, be far from indifferent to thoſe, who fancy themſelves beyond their reach: it is certain, that the

greateſt men may be made unhappy by the minuteſt inſtruments. The Lilliputians, if I remember right, could not kill Gulliver; but, watching their opportunity, they tied him ſo that he could not ſtir, and then galled him ſorely with their little goads and pricks. Tis poſſible, that your Lordſhip need not travel above an hundred miles from Cane Wood, to be convinced, that all this is very true.

Let me repeat it, my Lord, I do not mean, that you ſhould in any wiſe affect popularity: for I ſincerely deſpiſe the man who does. It is almoſt always the mark of a little, baſe, groveling ſoul: and I do not recollect to have heard of any of theſe oſtentatious careſſers of the People, who have not, when the proper teſt, like the ſpear of Ithuriel, has been applied to the ruling paſſion within, ſtarted forth in their genuine characters of Hypocrites and Knaves compleat.—Beſides—the ſtupendous folly of all this aſſiduity and court;

Car qui peut s'aſſurer ſur un peuple volage,
Dont la foible amitié s'exhale en vains diſcours?
Henriade.

Very ſhort-lived, indeed, ſuch friendſhip! and,

as the Poet ſays, "ſoon exhaled in empty "noiſe." When Themiſtocles diſcovered a ſpirit of this kind, his father pointed to ſome old galleys, which lay worn out and neglected on the ſhore; and, "juſt ſo, ſaid he, do the po- "pulace neglect their leaders and favorites, "when the novelty of them is over, and they "appear no longer fit for ſervice." [l]

Human nature and human ſociety are now ſo well underſtood, that no body can want ſuch hints as theſe: but then, my Lord, let us remember, that there is an immenſe diſtance between courting the populace, and deſpiſing the people; and a middle point from each, which a Stateſman poſſibly may think it beſt to reſt upon. "I know you account "the people for nothing, becauſe the Court "is provided with an army: but give me "leave to tell you, that they ought to be "accounted for much, when they account "themſelves to be all in all." [m] So ſaid the Cardinal de Retz, who knew them well. And if this be true of the people under Deſpotic

[l] Plut. *in Them.*

[m] *Je ſais que vous le peuple comptés pour rien, parceque la Cour eſt armée: mais je vous ſupplié de me permettre de vous dire, qu'on le doit compter pour beaucoup toutes les fois qu'il ſe compte lui-même pour tout.* Memoires. pour l'an 1648-9.

Governments, whoſe ſpirits are broken and eaſily kept down, how much more ſo of the free people of England, who, as *Junius* rightly ſays, "are neither deficient in ſpirit nor underſtanding, and therefore muſt not be treated, as if they had neither ſenſe to feel, nor ſpirit to reſent?" And ſurely it would be the higheſt impolicy to treat them ſo; ſince the only way, to make them *account themſelves all in all*, is to account them nothing at all.

Such reflections as theſe have often made me wiſh, for the ſake of that peace, harmony, and good underſtanding, which I ſhould rejoice to ſee eſtabliſhed between the Superior Powers and the People, that a little more attention, civility, and good humour, had been ſhewn by the former towards the latter: a little more condeſcenſion and indulgence to their weakneſs, their infirmities, and, if occaſion required, even to their paſſions. When the indignation of the People of England ran with a torrent againſt the Directors of the South-Sea project in 1720, and againſt ſome great perſonages at Court, who from intereſted views and motives were ſuppoſed to ſcreen them; King George the Firſt took an opportunity of telling the Lord Mayor of London and the Court of Aldermen, that *HE had no*

ſhare

ſhare in the late wicked management. The writer, from whom I have the anecdote, calls this an act of "unparallelled goodneſs, "and ſuch a piece of Royal grace, as never "ſubjects were bleſſed with before." [n] But whatever goodneſs there might be, there was ſurely no leſs policy, in it. So, at leaſt, it appears to my humble apprehenſion: for, though perfectly aware, that there would be no end of making conceſſions, and of exculpating, to Individuals, or to Party-Cabals, who never mean to be ſatisfied; yet I cannot but think, that there are certain critical moments, when a condeſcending act of a general kind might produce very good and ſalutary effects.

It has been the complaint of Adminiſtration for many years, that the People of England have been inflamed and miſled by factious and wicked writers, who have from time to time held forth the king to his ſubjects as a weak and obſtinate Prince; who have deſcribed his Miniſters and Servants, as not only incompetent for all the purpoſes of good Government, but as a ſelfiſh, corrupt, and profligate crew; who have repreſented the Parliament, the Majority there at leaſt, as a

[n] *Cato's Letters*, N° 29.

cabal

cabal of perjured hirelings, the creatures of a deſigning court, and, inſtead of the repreſentatives, the betrayers of their Conſtituents: and yet,—that all this is utterly falſe and feigned. But why, then, is not it ſhewn to be ſo? If the People of England have not juſt and adequate ſentiments of their Governors, theſe Governors ſurely have no body to blame but themſelves.

Suffer me, my Lord, to clear this matter a little.—The People *petition* againſt what they call *Grievances*, and theſe *Grievances* are ſpecified at large: the Court, without deſcending to particulars, content themſelves with replying, that the Grievances are pretended, and the *Petition* without foundation. The former write pamphlets, croud the public papers, and uſe every means to diſgrace their Political Managers: the latter either hug themſelves in ſecurity and ſilence, or print vindications that are worſe than none. Where is the wonder, if under theſe impreſſions, however falſe, the People are inflamed and miſled, when no eclairciſſement at all is offered, nor the leaſt imaginable pains taken to undeceive them? Where's the wonder, if the People ſuſpect guilt, deep-laid projects againſt liberty, and ill intentions of every kind, when their Governors maintain an obdurate, contemptuous, malevolent ſilence towards

wards them throughout? for ſuch at leaſt they will always interpret it.

For my own part, I am perfectly convinced, that many things have been done, which cannot be juſtified: ſome from ignorance, others from inadvertence, and others perhaps from ſomething worſe, than either ignorance or inadvertence. I believe this, my Lord, not becauſe I happen to be of the oppoſing party, but becauſe I believe men to be, what they always have been, and what they always will be, Men. But, could I perſuade myſelf, that all, which has been ſaid againſt Governors and Government, has been truly and juſtly ſaid; could I ſuppoſe the King to be as weak, his Miniſters as wicked, the Parliament as proſtituted, as certain political writers have affected to deſcribe them; and could I farther be convinced, as many are, that the Body of the Engliſh people is altogether corrupt, immoral, and not only unfit, but even unwilling, to ſupport a ſtate of virtuous liberty;—in defiance of Solon's law, I would inſtantly be of no party at all. I would rather follow Solon's example; who, when he had done all he could to defend his Country, laid down his arms at his own ſtreet-door*. I would endeavour to think with

* Plut. *in Solon.*

Phocion;

Phocion; who, judging the Athenians too corrupt to raiſe any effectual oppoſition to Philip, gave every thing up, from a deſperate purpoſe of yielding to the fate of a Conſtitution, which was thought to be irrecoverably loſt.[p] Nay, I would not diſdain to take up with a meaner model, even that of the ſlave in Plautus: who, when he had been lamenting the ſtate of public affairs and public manners, and loſing himſelf in melancholy reveries, recovered at laſt to the wiſe and ſenſible reſolution of taking care of one:

Sed ego ſum inſipientior, qui rebus curem publicis,
Potiuſquam id, quod proximum 'ſt meo tergo,
tutelam geram. Trinummus.

There are perſons in Britain, I know indeed many, who indulge themſelves in theſe melancholy reveries: who think the Body Politic as well as the People in general too far diſtempered, to be ever recoverable to any healthy ſtate: who think, that no antiſeptics can withſtand the prevailing putrefaction; that the whole head is ſick, and the whole heart faint; that there is no ſound part in the body: and who, in conſequence, are prepared for, and reſigned to what may be called a political diſſo-

[p] Demoſth. *Philipp.* 3.

lution.

lution. [q] But let us not give up the game too ſoon. Let us hope better things; and merit at leaſt the praiſe of the old Roman, who was thanked

[q] The late Lord *Bath*, in a letter to Dr. *Swift*, dated Bath 22d November 1735, apologiſes for deſiſting to oppoſe the adminiſtration then in being. He urges firſt his ill ſtate of health; but "beſides this, ſays he, I am con-"vinced that our Conſtitution is already gone, and we "are idly ſtruggling to maintain what in truth has been "long loſt: like ſome old fools here, with gout and "palſy at fourſcore years of age, drinking the waters in "hopes of health again. If this was not our caſe, and "that the people are already in effect ſlaves, would it "have been poſſible for the ſame Miniſter, who had pro-"jected the exciſe-ſcheme, (the moſt odious ſcheme that "ever was projected, and before the heats it had occa-"ſioned in the nation were well laid) to have choſen a "new Parliament again exactly to his mind?—After this, "what hopes can there ever poſſibly be of ſucceſs? Un-"leſs it be from confuſion, which God forbid I ſhould "ever live to ſee. In ſhort, the whole nation is ſo aban-"doned and corrupt, that the Crown can never fail of "a Majority in both Houſes of Parliament:—and would "any man ſtruggle againſt corruption, when he knows, "that, if he is ever near defeating it, thoſe who make "uſe of it only double the doſe, and carry all their points "farther, and with an higher hand, than perhaps they at "firſt intended?—True patriotiſm can have no foundation, "but frugality. When I ſee Lords of the greateſt eſtates, "meanly ſtooping to take a dirty penſion, becauſe they "want a little ready money for their extravagancies, I "cannot

thanked by the ſenate for not deſpairing of the Commonwealth. Not to deſpair is a political virtue.

——— *Deus hæc fortaſſe benigna*
Reducet in ſedem via ———

At leaſt I will not deſpair, while we have ſuch men as your Lordſhip at the head of our affairs. Men of your abilities can do much, if you will; and I can not for my life conceive, why you ſhould not be willing to do all you can: eſpecially if it be true, as Monteſquieu has ſomewhere ſaid, that "the greateſt citizens of a "ſtate are moſt concerned in its preſervation."

But I go a ſtep farther, and ſuppoſe, for the ſake of argument, that the fears of theſe deſponding perſons are but too well grounded; that the empire of Britain is running the ſame race, which other Empires have run before it; that its conſtitution is worn out; and that all the efforts of its Patriots to reſtore it would be but ſo many ſtruggles in vain: what then? Why then—let us not aggravate the evils of

"cannot help wiſhing to ſee ſome papers writ by you, "that may, if poſſible, ſhame them out of it. This is "the only thing, which can recover our Conſtitution, "and reſtore honeſty:—but luxury is our ruin."

Swift's Letters.

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our ſituation, either by deſpairing too ſoon, or by not managing them rightly. If we muſt fall, let us fall as decently, as quietly, and with as much eaſe to ourſelves, as may be. If we muſt die, let the εὐθανασία at leaſt be conſulted: the ſecond object of the Stateſman, as well as of the Phyſician. If the Conſtitution of Britain can not any longer bear up under the ruling principles and manners of its inhabitants, let us not make its ruin more quick or more grievous by outrageous and violent meaſures. Finally, if we muſt be diſſolved and wear away, let it be, as they ſing, *by a gentle decay*; without convulſions, without agonies. Let us march off quietly, and gradually retire into our original ſervitude, barbariſm, and ignorance; until at length we be as little known to, and as much neglected and deſpiſed by, other empires of the Globe, as when we uſed to paint our naked hides with oker.

This Dedication is grown ſo long, that it is more than time to put an end to it: which yet I cannot permit myſelf to do, without firſt apologizing for the ſingularity of it; and eſpecially for the very numerous citations, ſo rarely ſeen in addreſſes of this nature.

With regard to the general intent and purpoſe of it, ſuffer me to declare, as I can with

the greateſt ſeriouſneſs and truth, that it has been drawn up, and is here publiſhed, with the ſole view of promoting the public good: that the deſign of it is, not to diſcourage and abate the ſuſpicions, the anxiety, the zeal of any true friend to liberty, ſo reaſonable and ſo neceſſary to guard and preſerve our excellent Conſtitution and Syſtem of Laws, but only to regulate theſe ſuſpicions, and to moderate this zeal; not ſo much to embrace the cauſe of any particular Party, as to mark what may poſſibly have been done amiſs by all Parties; and, upon the whole, to infuſe a ſpirit, and ſet an example, of gentleneſs, moderation, peace, and good humor, of which they ſeem all to ſtand in need.—To aim at promoting an agreement among Parties in a nation, ſo much ſoured with diſcontent and ill humor as Ours is, will paſs with ſome for a very ſimple-minded project; while, with others, it may poſſibly look like *Trimming*: as if the author, by affecting to eſpouſe the cauſe of none, had a ſelfiſh view of being well with all. But, did your Lordſhip ever know any thing got by *Trimming?* On the contrary, is not he, who would act as a common friend, almoſt ſure to be treated as a common enemy?—Mean while, it is indiſputably the intereſt of the kingdom to be at unity with itſelf: the ſafety, the

good

good order, the well-being of the Whole depend upon the compact and harmonious arrangement of the Parts; and this ſhould be the object of all the wiſe as well as all the good. For, in God's name, *quo ruitis, cives?* Suppoſe, that certain political Enthuſiaſts on the one hand, or thoſe whom their crimes or their fortunes have rendered deſperate on the other, could plunge the nation into civil tumult and confuſion:—who, I pray, would be the gainers? nay, would not all be rather loſers? unleſs we may except a few poor tattered raſcals, who muſt otherwiſe have ſtarved for want of plunder.

I am now to account for the numerous citations I have uſed, thoſe eſpecially from Greek and Latin writers. And for theſe I have ſundry and manifold reaſons; but, as *Vellum* ſays, I ſhall only mention ſix.

In the *firſt* place, as I have ſaid above, I did not mean this compoſition ſo much for a Dedication, as for a vehicle to convey certain ſentiments to the public. Theſe ſentiments were believed to have their uſe, or they had not been offered; and they were addreſſed to your Lordſhip, the more effectually to excite attention. There is therefore the ſame propriety in decorating and ſupporting them with citations:—and they have the ſame plea, right, and title

to be ſo decorated and ſupported, that all other compoſitions have; any uſe, cuſtom, or form of dedicating whatſoever, which has yet prevailed, notwithſtanding.—Yes: but then the impropriety and abſurdity of ſpeaking in an unknown tongue, of citing Latin and Greek to readers, who underſtand nothing but Engliſh, —pray, go on, Mr. Objector,—no, nor probably even That. Very true: but,

Secondly, the anonymous author of this addreſs may poſſibly be a man *perpaucorum lectorum:* he may not be ambitious of being univerſally read. He may not indeed carry the matter ſo far, with regard to common readers, as a certain French writer:

Ce n'eſt pas pour toi que j' écris,
Indocte & ſtupide vulgaire:
J' écris pour les nobles eſprits:
Je ſerois marri de te plaire.
Des Marais, *Viſionnaires.*

for this is carrying it farther than is neceſſary: but he may be allowed to ſteer a mean, and to deſpiſe that wretched impotence and weakneſs of ſpirit, which ſighs in plaintive whiſper to itſelf,—*Women and fools muſt praiſe me, or I die.* —In ſhort, he may think his purpoſe anſwered, if he is noticed by a few among the wiſer and

better ſort: for it luckily happens, (and, my Lord, it is always a lucky thing, whenever it does happen) that his being or well-being in no wiſe depends upon the ſale of this piece, or upon any profits ariſing directly or indirectly therefrom. A rare and ſingular felicity among Political writers!

A *third* reaſon for parading ſo much with Greek and Latin is, that perhaps he could not bear to be ranked with, but had a latent ambition to diſtinguiſh himſelf from, the bulk of ſcribblers in this ſame way: who begin to write Politics, and, to the diſgrace of Letters, affect to be authors, not only before they underſtand Greek and Latin, but before they have any real or accurate knowledge of Engliſh. It is enough for them, if they can ſpell with tolerable exactneſs: for this accompliſhment, joined with ſuch intelligence as the public prints ſupply, is uſually the ſtock in trade, with which a political writer ſets up. Upon which account I have often wiſhed,—and if it might not be thought a reſtraint upon the Preſs, of whoſe liberty I am, as I ought to be, ſcrupulouſly tender, I would ſtill wiſh—that every man, who preſumes to write upon matters of Religion or Government, ſhould be obliged to ſupport his meaning, once at leaſt with ſome Greek, and once with ſome

Latin citation; and ſhould produce at the ſame time a true and well-authenticated teſtimonial, that it was not furniſhed by another, but *bonâ fide* his own act and deed. A teſt of this ſort would prevent inundations of literary rubbiſh upon the Public; ſave reams of paper, which are every moment upon the point of periſhing; and particularly reduce the number of our State-writers, whoſe knowledge of letters is for the moſt part upon a level with their ſkill in Politics.

Fourthly, I muſt confeſs, that I was not without ſome ſecret hopes of amuſing your Lordſhip, by making many ſage and reſpectable perſonages paſs, upon ſome occaſion or other, in review before you. I have been told, my Lord, that you were formerly delighted with this ſort of company; and I ſuſpect you would have been happier, if you had always continued in it. My reaſon is, without offence be it ſpoken, that it is certainly better company, than your profeſſion, ſituation, and connexions, have ſuffered you to keep in your later years.

Fifthly, I was deſirous to give ſome little countenance and ſanction, as far as the poor authority of an unknown writer could avail, even to *Letters* themſelves. *Letters!* neglected, declining *Letters!* and with *Thee* declining all that

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is wiſe, and excellent, and beautiful, and poliſhed.— How would an aſtoniſhed *Macaroni* ſtare, to be aſſured, that the civilization of kingdoms is founded upon *Letters*; and that, in proportion as theſe are cultivated, ſo is nearly the progreſs of mankind from their moſt rude and ſavage ſtate, up to that perfection of elegance and refinement, which beameth forth from his all-finiſhed and refulgent perſon?—I ſpeak, my Lord, according to the Gentleman's own idea of himſelf.—

There was a time in this kingdom, when Letters were ſo low, that whoever could prove himſelf, in a Court of Juſtice, able to read a ſingle verſe in the Teſtament, was veſted with the higheſt privileges. In thoſe enlightened days, a Rector of a Pariſh, as we are told, going to Law with his Pariſhioners about paving the Church, quoted this authority as from St. Peter: *paveant illi, non paveam ego*, which he conſtrued, *they are to pave the Church, not I*: and this was allowed to be good law by a Judge, who was an Eccleſiaſtic too.[a] If the Clergy had then, as they are ſaid to have had, all the learning among themſelves, what a bleſſed ſtate muſt the Laity have been in? And ſo indeed

[a] Fielding's *Covent Garden Journal*.

it appears: for there is extant an old Act of Parliament, which provides, that "a Noble-"man ſhall be entitled to the benefit of his "Clergy, even though he cannot read:" and another law, cited by Judge Rolls in his Abridgment, ſets forth, that "the command of the "Sheriff to his Officer, by word of mouth, "and without writing, is good: for it may be, "that neither the Sheriff nor his Officer can "write or read."—Who can ſay, that ſuch Halcyon times may not return? When I contemplate the ignorance and diſſipation of the *Great*, whom the *Little* are ſure to follow: when I conſider their not only neglect, but even contempt of, Letters; their gambling and low amuſements; their luxury; the avarice, meanneſs, and ſelfiſhneſs, which prevail among them,—I can ſcarce forbear exclaiming, that—*Signs following ſigns lead on the mighty year.*

My *ſixth* and laſt, but certainly not leaſt important, reaſon for citing grave and reſpectable writers is, to illuſtrate and confirm my own ſentiments by the authority of others. My plan, as I have ſaid above, is not ſo much to teach men things of which they are ignorant, by deſcanting in detail and at large, as juſt to remind them of what they know: not ſo much to *make them read*, to borrow Monteſquieu's expreſſion,

preſſion, *as to make them think*. For this the citing of authorities, and dealing in perſonal anecdotes and apophthegms, ſeems perfectly well calculated: for, however it be, men frequently pauſe and dwell upon Names, who would haſtily and inadvertently ſkim over Things. Nay, let the reaſoning be ever ſo cloſe and ſound, it ſhall often paſs for little more than declamation; while the name of ſome admired author, eſpecially if he be dead, ſhall arreſt the imagination, and make all the impreſſion, which is neceſſary to produce conviction.

I will now conclude in good earneſt, after having ſettled a ſmall affair with your Lordſhip, which concerns your Lordſhip only. It cannot have eſcaped the moſt inattentive reader, that you have been treated, in the courſe of this addreſs, with much familiarity and freedom; nay, in the opinion of ſome, perhaps with more, than can with decency be offered to the height and dignity of your ſtation. But — it is the faſhion of the times, not to ſtand upon ceremony with the Great: and then, I truſt, it will weigh ſomething with your Lordſhip, that I am probably infected with the licentious ſpirit of my Countrymen; ſo apt to forget the *reſpect* due *to perſons*, and the ſubordination,

ordination, which not only the good order, but the very being, of Society requires. Nevertheleſs, I hope and truſt, that I have kept within the bounds of civility and reſpect; which, permit me to obſerve, muſt be thought no eaſy matter for us Patriotic writers, when it is conſidered, with what impetuous zeal and ardor we naturally combat in the glorious cauſe of Liberty. Nay, I ſometimes think, that this civility and reſpect may have been carried ſo far, as to draw upon me the ſuſpicion of inſincerity: as if I was not in earneſt; as if, under the flimſy cover of a few ſeeming ſtrictures, I meant to betray the cauſe, I affect to defend; as if this moderate treatment of your Lordſhip, to which you have been ſo very little accuſtomed, was nothing elſe but a mode of flattery; and, to ſpeak out, as if, whatever zeal I may pretend for the Public, my only view was to ſerve myſelf.

But ſhould any ſuch defaming miſcreants ſtart forth, the author of this addreſs would have them to know, that he is one of thoſe few, who has long ago learned to ſay with *Socrates*, aye, and cordially too, πόσων ἐγὼ χρείαν οὐκ ἔχω; *how many things do I not want?* that his ſituation and circumſtances, though great-

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ly below envy, are yet far above contempt; that he is able to refuſe more, than your Lordſhip has to give; and that (how frantic ſoever the renunciation may ſound) he certainly would refuſe any thing from any man, which might contradict his humor, or the way of life he has choſen.

Mean while, my Lord, whatever familiarities I may have exerciſed towards your Lordſhip, I am aſſuredly not your enemy; nor ever can with reaſon be ſo, till I am more convinced, than I am as yet, that you are an enemy to the Laws and Conſtitution of your Country. It is poſſible, that you have done many things, which perhaps in ſtrictneſs can not be juſtified: and I wonder, which of your predeceſſors, as ſeverely ſcrutinized, would not be found to have done the ſame? You may have deſpiſed the rigid injuſtice of the *Letter*, for the Equity of the *Spirit*, in ſome of your deciſions: and, if this be wrong, I hope it will be forgiven you. You may have acted ſometimes on the ſide of Prerogative, by way of ballance againſt Democratic licentiouſneſs: and you may ſeem to have had reaſon; becauſe, as Polybius ſays, "a "Conſtitution" (and he really might have had his eye upon ours) "is never in its perfect

" ſtate, but when each ſeparate power, being " ſtill counteracted by the reſt, is retained " in due poſition, and the whole govern- " ment preſerved in equal ballance." [b]

Upon the whole, my Lord, as I believe you to be no worſe, than any of your Aſſociates in Politics; ſo I am really an admirer of your abilities, which I believe to be better. I believe them to be large and comprehenſive, and without any of that contraction and narrowneſs of Mind and Spirit, which an application to Law has often brought upon Men of even uncommon powers. The importance of ſuch a man as your Lordſhip, is not known, till it is miſſed. If, ſays Plato, " a " Shoe-maker be a bad one, or indeed no " Shoe-maker at all, but only a pretender to " the trade, no great miſchief is done to a " State: but that the Guardians of the Laws " be ſuch only in appearance, and not in reality, " is of deſtructive conſequence to it." [c] Under a full conviction of this, I venture to declare myſelf pleaſed, that a man like your Lordſhip is placed in ſo weighty and conſpicuous a ſtation. As much as has been ſaid

[b] Lib. VI. Extr. 1.
[c] De Republ. L. IV.

and

and written againſt you, I am inclined to wiſh, that there were many ſuch as you: for we have full as much, nay I doubt more, reaſon to ſay in our times, than Tully had in his: *nunc plerique ad honores adipiſcendos, et ad rempublicam gerendam, nudi veniunt atque inermes, nulla cognitione rerum, nulla ſcientia ornati.* [d]

My Lord, I have only to beg, that you will not miſtake the uſe and intent of this addreſs; but be pleaſed to accept it with the ſame good meaning, with which it is tendered.

I have the honor to be, my Lord, Your Lordſhip's moſt faithful humble ſervant,

The Editor of

The IRENARCH.

November, 1773.

[d] De Orat. III. 33.

TO THE

GENTLEMEN

IN THE

COMMISSION of the PEACE

For the County of LEICESTER.

Leiceſter, 11 March, 1771.

GENTLEMEN,

A New Commiſſion of Juſtices of the Peace for this County having lately arrived, wherein I have the honour to find myſelf named, I naturally gave way to certain thoughts upon the ſubject; which, falling unexpectedly into ſome kind of order, I have ventured upon the propriety of addreſſing thus publicly to you.

Theſe thoughts, Gentlemen, concern, *firſt*, the Origin of theſe ſubordinate

ordinate Magiſtrates; *ſecondly*, the Nature, Extent, and Limits of their Office; and, *thirdly*, the Qualifications neceſſary to diſcharge it laudably; that is, with credit to themſelves, and ſervice to their Country.

Origin of Juſtices.

I. Concerning the *Origin* of this Office, few words may ſuffice: this being a circumſtance rather curious, than uſeful to the purpoſe I have at preſent in view.

Now, Gentlemen, Peace being the foundation of every bleſſing, and ſo neceſſary to Society, that Society cannot even ſubſiſt without it, all civilized nations have been careful to preſerve it. The *Common Law* of England hath ever had a ſpecial regard to this; and therefore, before the preſent conſtitution of Juſtices was invented, there were peculiar officers appointed by it for the maintenance of the public peace, who were thence named *Cuſtodes* or *Conſervatores*

tores Pacis[a]. These Conservators of the Peace were, by force of the King's Writ, chosen by the Freeholders in the County-Court, as the Coroners and Knights of the Shire for the Parliament continue to be now: after which Election so made and returned, the King directed a Writ to the Party elected, to take upon him and execute the Office, until the King should order otherwise[b].

In this State were things at the end of Edward the Second's reign. But when Isabel, his wife, had contrived to depose that unhappy Prince by a forced resignation of the Crown, and had set up in his stead his son Edward the Third; then, to prevent any commotions or risings from an example so un-

[a] Blackstone's *Commentaries on the Laws of England*, Vol. I. p. 349. edit. 1768.

[b] Burn's *Justice of the Peace*, Vol. III. p. 4. edit. 1769.

precedented in England, and eſpecially as the old King was inhumanly treated, Writs were ſent by the new King to all the Sheriffs in the Kingdom [c], plauſibly ſetting forth the manner of his obtaining the Crown, as being *ipſius patris beneplacito:* and withal commanding each Sheriff, that the Peace he kept throughout his Bailiwick, on pain and peril of diſinheritance, and loſs of life and limb. And, in a few weeks after the date of theſe Writs, it was ordained by Parliament [d], that "for the better maintaining and "keeping of the Peace in every "County, good men and lawful, "which be no maintainers of evil, "or barretors in the Country, ſhall "be aſſigned to keep the Peace." In this manner, and upon this occaſion,

[c] The form of theſe Writs is preſerved by *Thomas Walſingham*, in his *Hiſt.* A. D. 1327.

[d] *Statutes*, 1. Edw. III. c. 16.

caſion, was the election of Conſervators of the Peace taken from the People, and given to the King; this aſſignment being conſtrued to be by the King's Commiſſion [e].

Still they were called only Conſervators, Wardens, or Keepers of the Peace; till the Statute 34

e "From this Act of Edward, ſays *Lambard*, "we are to date that great alteration in our "conſtitution, whereby the election of Con- "ſervators of the Peace was taken from the "people, and tranſlated to the aſſignment of "the King." *Eirenarcha*, 20. And doubtleſs a great alteration it was, ſince it veſted a mighty power in the Crown, and a prodigious influence over the People, which they had not before. For, the Commiſſion being revocable at pleaſure, a Prince or his Miniſters may at any time fill it with whomſoever they pleaſe; and, without any regard to Reaſon and Equity, may ſtrike perſons out, or put them in, according as they ſhall find them more or leſs qualified to be fit inſtruments or tools for any private purpoſes of their own. The change therefore may accidentally be attended with very bad conſequences, as indeed it hath been in ſome former reigns.

Edw. III. c. 1. gave them the power of trying Felonies; and then they acquired the more honourable appellation of Juſtices. [f] Thus the form of the Commiſſion was enlarged in the reign of Edward the Third; and it continued further to be enlarged in the reign of almoſt every ſucceeding Prince, till the 30th year of Queen Elizabeth: when, by the number of Statutes particularly given in charge therein to the Juſtices, it was become ſo perplexed and cumberſome, that there was an abſolute neceſſity for its being redreſſed. This was done in the year 1590, when the form of the Commiſſion was ſettled by all the Judges; and it continues with very little alteration the ſame to this day [g]. So much, Gentlemen, for the origin

[f] Lambard, 23.

[g] Blackſtone, I. 351.—Burn, III. 7.

and

and enlargement of this ſubordinate Magiſtracy: next,

II. Concerning the *Nature, Extent*, and *Limits* of it.—Now theſe depend on the *Commiſſion*, and on the ſeveral *Statutes*, which have created to this Magiſtrate objects of his Juriſdiction.

Nature, Extent, and Limits of their Office.

And here, with regard to the *Commiſſion*, we may obſerve, that it hath two parts; or conſiſteth of two different aſſignments. By the firſt aſſignment, any one or more Juſtices are empowered to *conſerve the Peace*, and thereby have all the power relating to it, which the ancient *Conſervators* had at the *Common Law*; and alſo that whole authority, which the *Statutes* have ſince added thereto. This power and authority conſiſteth in ſuppreſſing riots and affrays, in taking ſecurities for the Peace, and in *apprehending* and *committing* felons and other inferior criminals. By

the ſecond aſſignment they are alſo impowered, any two or more of them, to *hear* and *determine* all felonies and other offences. The buſineſs of this aſſignment belongeth to the Seſſions of the Peace, and is indeed the ground of their Juriſdiction there.

By this it appeareth, that two Juſtices may hold a Seſſion, but that one Juſtice cannot: and the clauſe, which gives power to two or more Juſtices to hear and determine offences, requires, that at leaſt one of thoſe Juſtices be of that ſelect number, which is commonly termed of the *Quorum*; from that word in the Latin Commiſſions, *quorum unum eſſe volumus*. For thoſe of the *Quorum* were wont to be choſen ſpecially for their knowledge in the Laws; and this it was, which led the makers of ſeveral ancient Statutes expreſsly to enact, that ſome learned in the

Laws

Laws ſhould be put into the Commiſſion of the Peace. But Law-learning, as well as learning of every kind, being greatly advanced and improved, ſince the firſt inſtitution of this Office, the diſtinction is grown in a manner obſolete; and all or moſt of the Juſtices are now equally aſſigned to be of the *Quorum*. And by the Statute 26 GEO II. c. 27. "no act, "order, adjudication, warrant, in-"denture of apprenticeſhip, or other "inſtrument, done or executed by "two or more Juſtices, which "doth not expreſs that one or "more of them is of the *Quorum*, "(although the Statutes reſpec-"tively do require it) ſhall be im-"peached, ſet aſide, or vacated, for "that defect only [h]."

But the *Commiſſion*, although the primary, is not yet the only ſource

[h] Lambard, 48, 49.—Burn, III. 19.

of Power to theſe Magiſtrates: Many *Statutes* have likewiſe given them Juriſdiction over a vaſt number of Offences, which are not mentioned in the *Commiſſion*. And hence it is evidently no eaſy matter to define with any exactneſs the extent and limits of their Office. As Juſtices or Conſervators of the Peace, they derive power from the *Commiſſion* over all offences and crimes whatever, which are either directly, or at leaſt by conſequence and judgement of law, againſt the Peace. And the powers, given them from time to time by the ſeveral *Statutes*, have extended their Juriſdiction to an almoſt undefinable and unbounded compaſs: ſo undefinable and unbounded, that, to borrow the language of an eminent artiſt, it is ſcarcely poſſible *to gage the contents* of it [1].

[1] An expreſſion of Hogarth's, applied to the

Theſe

Theſe *Statutes* at the ſame time have gradually heaped upon them ſuch an infinite variety of buſineſs, and ſo overburthened the Office, that, as Judge Blackſtone ſays, "few care to undertake, and fewer "underſtand it [k]." We ſeem in vain to expect this ſervice from the men of large fortunes, though certainly the moſt fit, on account of that weight, which Property always gives to its poſſeſſors; and in whom we ſhould wiſh to repoſe this high truſt; **always provided,** that their abilities to execute it bear ſome reaſonable proportion to their fortunes; for I ſhould be ſorry to ſee Montaigne's experience confirmed and exemplified in the caſe before us. *Je trouve*, ſays this Gaſcon, *que les premieres ſieges ſont*

outlines of figures in Painting and Sculpture. *Analyſis of Beauty.*

[k] *Commentaries*, I. 354.

communement

communement ſaiſis par les hommes moins capables, & que les grandeurs de fortune ne ſe trouvent gueres jointes a la ſuffiſance [l].

In the mean time, what muſt become of this reſpectable Office? Why, thus neglected, and as it were ſlighted, it will oftentimes fall into mean and unworthy hands; into the hands of men, who have neither wit nor honeſty enough to diſcharge it laudably; into the hands of men, who *make merchandize* of it, who *trade* with it; [m] of men, in ſhort, who are ſo

[l] *Eſſais*, I. 25.

[m] Thoſe we call *Trading Juſtices* now, went by the name of *Baſket Juſtices* in Queen Elizabeth's reign: as if men, who could do nothing without a preſent; "yet who, for half a dozen "of chickens, would diſpenſe with a whole do-"zen of Penal Statutes." So a Member expreſſed himſelf in the Houſe of Commons, as Sir Symonds D'Ewes relates, in his *Journals of Parliaments in Queen Elizabeth's reign.*

far

far from executing it with dignity and credit, that they are in reality nothing better, than mere contemptible and ſcandalous tools of office.

And then the extenſive power of this Magiſtracy (of which, ſubordinate as it may ſeem, Lord Coke ſays[n], "the whole Chriſtian world "hath not the like, if it be duly "executed") will be proſtituted to the low vile purpoſes of ambition, avarice, or even perſonal reſentment. So that, upon the whole, if any man of real abilities and integrity; any man, who is ſuperior to ſordid and ſelfiſh views, and animated only with an ambition of being uſeful to his Country; any

[n] 4 Inſt. 170. —— *Eſt proprium munus Magiſtratûs intelligere, ſe gerere perſonam* Regis, *debereque ejus dignitatem et decus ſuſtinere, ſervare leges, jura deſcribere, ea fidei ſuæ commiſſa meminiſſe.* Cic. de Offic. I. 34.

man, in ſhort, who is *competently qualified*; will undertake this troubleſome office, the Public may think themſelves not a little obliged to him.——What manner of man this *competently qualified* perſonage muſt be, is our next and capital point to be conſidered.

Qualifications of Juſtices.

III. Now, Gentlemen, when I ſpeak of the *Qualifications* of a Juſtice of the Peace, you will eaſily perceive, that I do not confine myſelf to that ſingle qualification merely, which the *Law* requires: for a man may poſſeſs this, and yet be far from being qualified in my ſenſe of the word; that is, as Reaſon and *Equity* require him to be. By the Statute 18 Hen. VI. c. 11, it was enacted, that no Juſtice ſhould be put in Commiſſion, if he had not lands to the value of £. 20 *per annum*; and, as the rate of money is greatly di-

miniſhed ſince that time, it is now enacted by the 5 Geo. II. c. 11, that every Juſtice ſhall have £. 100 *per annum*, clear of all deductions;° and if he acts without ſuch qualification, ſhall forfeit £. 100.

But, Gentlemen, a man may poſſeſs £. 100 *per annum*, and yet be a weak, inſignificant, and worthleſs fellow. He may be perfectly illiterate, and in a high degree ignorant: and he may always remain ſo, if he happen to be one of thoſe, whoſe life is ſpent in low and frivolous amuſements; who is, for inſtance, continually occupied in poaching for hares, in dragging

Fools and low fellows of any fortune unqualified.

° A man may alſo act as a Juſtice of the Peace, who ſhall be entitled to the immediate reverſion or remainder of lands leaſed for one, two, or three lives, or for any term of years determinable on the death of one, two, or three lives, upon reſerved rents of the clear yearly value of £. 300, by the 18 Geo. II. c. 20.

for fiſh, in driving partridges, in piping for quails, and ſuch-like purſuits. This deſcription, Sirs, muſt not be taken, for indeed it is not meant, as a cenſure levelled at *real* Gentlemen for Sports, which, when enjoyed with moderation, are not only uſeful, but even laudable; but at thoſe everlaſting deſtroyers of *the Game*, who, though *denominated* Gentlemen by the curteſy of England, are yet juſtly to be ranked among the loweſt and meaneſt of the people. Theſe, far from poſſeſſing the leaſt portion of that open, liberal, manly ſpirit, which belongs to true Sportſmen, are only ſeen lurching and ſkulking about for *prey*; that is, to *ſave ſo much bacon in the kitchen.* [p]

Again

[p] Though the author has been ſevere upon theſe rural gentry, and it may be juſtly; yet, to do all right to their merit, it muſt be acknowledged, that they are for the moſt part perſons

Again. A man may poſſeſs £. 100 *per annum*, and yet be more unqualified, than even the perſons juſt *Knaves and Tyrants yet more ſo.*

perſons of activity and ſpirits, and therefore ought in reaſon to be provided with an object. If they cannot be placed high in the ſcale of Intellectual Beings, as moſt certainly they cannot, they have however their place; and there are, doubtleſs, ſituations accommodated to their talents. Thus, though they may not be fit to determine upon matters of Law and Equity, yet they may do good ſervice in the lower departments of Society. We reward, it is well known, the killers of moles, the deſtroyers of fulmonts, the catchers of rats, *&c.*: and we conſider them as members of Society, really uſeful in a Pariſh, for their great care and ſkill in deſtroying the vermin thereof. Even hares, I am perſuaded, might be ranked among vermin, and highly noxious vermin too, were they to be preſerved as religiouſly, as ſome over-rigid Gentlemen affect to preſerve them; and it is owing to the active perſonages deſcribed above, that they cannot be ſo preſerved. So far then theſe perſonages are at leaſt of ſome uſe to a neighbourhood, and ſo far we admit them as men of a certain portion of merit; but, as Juſtices of the Peace, as Magiſtrates who are to preſide in Courts, and

juſt deſcribed. He may not be weak, but he may be wicked. He may not be ignorant of the forms of buſineſs. He may moreover be acquainted with both Common and Statute Law, as far as his Office requires him ſo to be. But he may pervert this Law: he may execute it partially; that is, he may exceed or be deficient, juſt as intereſt or private motives ſhall happen to direct him. He may, farther, be obſtinate, capricious, overbearing, paſſionate; void of humanity and fellow-feeling: regardleſs of right and equity; unreſtrained by any principle of Reaſon or Religion; addicted to filthy

and to adjuſt and ſettle the affairs of men, we can by no means admit them. An union of characters ſo very diſſimilar would be quite unnatural: it would be repugnant to all congruity and fitneſs: it would be joining things together, which nature and common ſenſe always meant to keep aſunder. *The Editor.*

lucre

lucre, covetous, an extortioner; in ſhort, a very complete tyrant, and a very hardened villain. Now, Gentlemen, you will grant at once, that if, inſtead of £. 100 *per annum*, a man were to poſſeſs £. 100,000 *per annum*; yet with endowments ſuch as theſe, or even a competent ſhare of them, he would be poorly qualified for the Magiſtracy in queſtion. He would indeed be ſo very unfit, that a greater nuiſance in Society could not exiſt, than ſuch a monſter inveſted with power.

Real Qualifications.

From contemplating the qualities, which a Juſtice of the Peace ſhould not have, let us paſs on to thoſe he ſhould have. Now, Gentlemen, theſe may all be comprized under the general terms of *Wiſe* and *Good:* which we will analyſe into their particular qualities, ſo far

at leaſt, as the execution of this Magiſtracy is affected by them.—And firſt of a *wiſe* Magiſtrate.

A good underſtanding.

1. To diſcharge this Office with *Wiſdom*, a man ſhould poſſeſs a quick, clear, ſound underſtanding. He ſhould be able to penetrate with acuteneſs, to diſcern with accuracy, to judge with ſolidity. He ſhould know how to dive into perſons and things [q]; to mark nicely the *real* differences in caſes, which may *ſeem* to be alike; and to aim upon all occaſions with ſuch exactneſs of judgment, as neither to ſhoot over nor under, but to ſtrike preciſely upon the point, on which the determination of the whole matter hinges. Theſe are indiſpenſable talents in a

[q] He ſhould be, as Cæſar ſays of Caſſius,

—— *a great obſerver; and who looks*
Quite through the deeds of men.

SHAKESPEAR.

wiſe Magiſtrate, as being the very groundwork of all the reſt.

2. He ſhould have alſo a good knowledge of the world; of men and manners; of ſuch men and ſuch manners at leaſt, as he is chiefly to converſe with. He would indeed have greater advantages, if he knew human life in more enlarged and extended views. He would then be able to ſcan human nature under all its variety of modes and attitudes; and clearly perceive, how every ſet of manners (ſo to expreſs it) regularly and conſequentially ſpring from each reſpective ſituation and profeſſion. He would judge more readily of the different orders of men, their different habitudes, their different ways of thinking and acting, as well as their different motives and principles of action. And this ſort of knowledge would aſſiſt him wonderfully in developing and

A knowledge of the World.

unfolding many perplexed and intricate combinations, in unravelling many obſcure and entangled caſes, that muſt come before him in the courſe of his Office.

Learning, eſpecially in the Law.

3. But, Gentlemen, neither natural endowments, nor an acquired knowledge of men and things, will ſuffice of themſelves to form a *wiſe* and able Magiſtrate: he muſt be, farther, in ſome degree learned. I do not mean, learned at large, (though ſurely a good tincture of general learning muſt, even in this province, give a man greatly the aſcendancy over thoſe who want it) but I mean, learned in the Law. For, although an excellent underſtanding, with a perfect knowledge of the world, may enable a man, not converſant in the ſtudy of the Laws, to follow certain particular directions concerning the ſervice of the Peace; yet when the proceeding muſt be, for inſtance,

ſtance, as it often will be, by way of preſentment or indictment, upon the evidence of witneſſes, and oaths of jurors, and by the order of hearing and determining, according to the ſtraight rule and courſe of the law, it is manifeſt, that ſome learning therein is abſolutely neceſſary[r].

In the mean time, Gentlemen, I dare not expect, that this our Magiſtrate ſhould be a conſummate Lawyer; nor can that indeed be thought neceſſary: but I beg leave to expect, and with ſome earneſtneſs too, a knowledge of thoſe Laws, which concern his Office, and alſo a knowledge of the Laws and Conſtitution of his Country in general. For, let me obſerve it by the way, no man will acquit himſelf, at leaſt in an able and maſterly manner, in any particular branch, without having

A conſummate Lawyer not neceſſary.

[r] Lambard, 49—Burn. III. 19.

a general idea of the whole. He may drudge on, as Rules and Orders lead him, like ſome little tool in a ſingle department; but his notions will be circumſcribed within the narroweſt bounds, and his ſyſtem of action will be poor and diſpirited.

Lambard, Burn, Blackſtone, Wood, *recommended for inſtruction in Law.*

For theſe reaſons I ſhould ſuppoſe, that no man would take upon him the execution of this Magiſtracy, who has not only peruſed, but even ſtudied Mr. Lambard's *Eirenarcha*, and Dr. Burn's *Juſtice of the Peace*: wherein, Judge Blackſtone tells us, "he will "find every thing relative to this "ſubject, both in ancient and mo-"dern practice, collected with "great care and accuracy, and diſ-"poſed in a moſt clear and judi-"cious method[s]." I may alſo venture to recommend this learned

[s] *Commentaries*, I. 354.

Judge's

Judge's *Commentaries on the Laws of England:* not merely, becauſe they "comprize almoſt every ob-"ject of the juriſdiction of a Juſ-"tice of the Peace," as he himſelf tells us[t], and I believe very truly: but becauſe they give by far the beſt account, that can be found in any ſingle work, of the Laws and Conſtitution of this Country in general. And if the Student will accompany theſe with a view of the *Statutes,* as they are *abridged* by Mr. Cay, he will ſtill be more enlightened and confirmed in his progreſs. Not that any Magiſtrate ſhould truſt intirely to Abſtracts and Abridgments; ſince no Statute can be ſo abridged, but that the Abridgment will want more or leſs of the Original. He ſhould always have an eye therefore to the *Statutes at large,* and

[t] *Commentaries,* I. 354.

take all his directions and measures from thence; for, as Lord Coke observes, "abridgments are of "good and necessary use to serve "as tables, but not to ground any "opinion, much less to proceed "judicially, upon [u]."

Need I point out any more books of Law? Yes, I will add Mr. Wood's *Institute*, and Dr. Burn's *Ecclesiastical Law*. Without the latter, the Magistrate's knowledge will not be complete; for *Ecclesiastical* Law partakes of the *Civil* Law, the *Canon* Law, the *Common* Law, and the *Statute* Law. It is compounded of these four main ingredients [w]; and therefore must interfere more or less with the office of this Magistrate. As to Mr. Wood's *Institute*, it is

[u] Dalton's *Justice*, c. 173.
[w] Burn's *Pref. to Eccles. Law.*

not

not indeed a work to make a man a thorough Lawyer: it is acknowledged to be too ſhort and compendious. But it is very methodical and very clear; and it will give the Student a general inſight into the Law, which is the thing at preſent required.

The very few works mentioned above, and ſurely they are very few, may yet perhaps ſuffice to make a *wiſe* Magiſtrate, ſo far as this *wiſdom* depends upon learning in the Law. My intent however is not to circumſcribe or confine him: I mean only to point along the Great Walks: let him make excurſions, as unforeſeen avenues ſhall occaſionally invite him. In the mean time, what regard is to be had to *Equity*, which is ſo much more an object of this Magiſtrate's conſideration, than even *Law*? — Are the principles of *Equity* born with us;

Puffendorf *and* Grotius *for inſtruction in Equity.*

us; or muſt they, like all other knowledge, be acquired? I ſtay not to determine; but obſerve only, that, however ſafe it may be to truſt to Nature as the Planter, it is ſtill ſafer to recur to Education or Diſcipline as the Waterer, of theſe principles. *Equity* ſhould then be taught antecedently to *Law*, as indeed the proper foundation whereon to build *Law*: and happily it may be taught much ſooner than *Law*. There are two works upon this ſubject, which comprize, I ſuppoſe, all that can be ſaid of it; I mean, Grotius *Upon the Rights of Peace and War*, and Puffendorf *Concerning the Law of Nature and Nations*. Theſe determine, upon principles of *Equity*, what the conduct of man ſhould be in almoſt every conceivable ſituation: and contain an inexhauſtible fund of knowledge, proper indeed for eve-

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ry Gentleman, but peculiarly ſo to this Magiſtrate; before whom ſo many caſes are brought, which are hardly to be reduced to, or determined by, any rule of *Law*.

Thus far of the qualities, which will make a *wiſe* Magiſtrate; now, Gentlemen, of the qualities, which will make a *good* one.

4. And the firſt of theſe is *Juſtice*: Juſtice being of the very eſſence of his Office, and the great Pole-Star as it were, by which all his proceedings are to be directed. To do juſtly, is to render unto every man his due: [x] and what this due is, an intelligent knowing perſon will for the moſt part eaſily aſcertain. Juſtice, ſays the greateſt Magiſtrate of the greateſt Empire that ever was, "is the miſtreſs *Juſtice.*

[x] *Juſtitia ſuum cuique tribuit.* Cic. de Nat. Deor. III. 15. So the Digeſt: *Juſtitia eſt conſtans et perpetua voluntas ſuum cuique tribuendi.* Lib. I. Tit. 1. §. 10.

"and

" and queen of all the virtues [y]." It is indeed the baſis of all Social Virtue, as well as Happineſs; the very corner-ſtone, on which Society is built: and therefore, as the ſame illuſtrious perſonage wiſely preſcribes, " the utmoſt care is to " be taken, that nothing be con- " tended for againſt Equity, no- " thing the leaſt injurious to ano- " ther; ſince," as he adds, " Juſ- " tice is the foundation of laſting " fame and reputation, and with- " out which nothing can be glori- " ous [z]."

[y] *Hæc una virtus omnium eſt domina et regina virtutum.* Cicero *de Offic.* III. 6. — According to an ancient Greek Moraliſt, every other virtue is comprehended in that of Juſtice:

Ἐν δὲ δικαιοσύνῃ συλλήβδην πᾶσ' ἀρετή 'στι.

Theognis.

[z] *Opera danda eſt, ne quid contra æquitatem contendas, ne quid per injuriam. Fundamentum enim perpetuæ commendationis et famæ eſt Juſtitia, ſine qua nihil poteſt eſſe laudabile.* Ib. II. 20.

But

But *Juſtice*, exerciſed too rigorouſly, is often found, amidſt the various windings and entangled combinations of human affairs, even to border upon injuſtice: inſomuch that the Civilians have eſtabliſhed it into a maxim, that "extreme juſtice is extreme in-"juſtice;" *ſummum jus ſumma injuria*. And therefore the next *good* quality in this Magiſtrate, and which may ſerve to temper the former, is,

5. *Moderation*: that is, Gentlemen, if I may uſe upon this occaſion the language of the Prophet, he muſt not only *do juſtly*, but he muſt alſo *love mercy* [a]. I do not mean, that he muſt ever act otherwiſe than the Laws direct, or at any time diſpenſe with the juſt execution of them; but only, that he be governed therein, *Moderation.*

[a] Micah VI. 8.

as

as often as he can, by the *Spirit* rather than the *Letter* of them. For in the Law, Gentlemen, as well as in the Goſpel, *the Letter* frequently *killeth*; as, when any Law or Statute, from a new and different ſituation of things and perſons, gradually brought on by courſe of time, enforceth proceedings different from, or contrary to the true original intent and meaning of it. The Office of this Magiſtrate, therefore, ſhould be in part a kind of a petty Chancery; a Court of Equity, as well as a Court of Juſtice: where a man, although he is purſued by *Law*, may yet be redreſſed by *Equity*, as often as the Caſe will admit of it; and that will be as often, as the *Spirit* of any Law or Statute ſhall be found to claſh with its *Letter*. [b]

Theſe,

[b] Although what is ſaid in the text upon Law and Equity, may ſeem conſentaneous to Nature

Theſe, Gentlemen, are what I would call the *Primary* qualities, neceſſary to make a *wiſe* and a *good* Magiſtrate: namely, a quick, clear, and

Nature and Reaſon; yet it muſt be noted, that the Magiſtrate has no power to decide according to Equity, when it is oppoſed to written and poſitive Law, or ſtands in contradiſtinction to it: no, not even the Judge, much leſs the Juſtice. It is a maxim, *ubi lex non diſtinguit, nec nos diſtinguere debemus:* and again, *judicandum ex legibus, non de legibus.* And an ancient pronounced it very dangerous for a Judge *to ſeem more humane than the Law:* φαίνεσθαι φιλανθρωπότερον τῷ νόμῳ. The danger conſiſts in its opening a latitude of interpretation, which, by gradually relaxing and weakening, would in time deſtroy the authority and tenor of Law. For, as one obſerves, "though all general laws are attended with inconveniencies, when applied to particular caſes; yet theſe inconveniencies are juſtly ſuppoſed to be fewer, than what would reſult from full diſcretionary powers in every Magiſtrate." So that the Diſpenſation of Equity ſeems reſerved, and with good reaſon, not to the Judge who is tied down by his rules, but to the Law-giver or Supreme Legiſlator: according to that well-known maxim, *ejus eſt interpretari, cujus eſt condere.*

Thus

and ſound underſtanding; a perfect knowledge of the world; a competent acquaintance with the Laws and Conſtitution of his Country;

Thus Conſtantine the Emperor: *inter æquitatem juſque interpoſitam interpretationem nobis ſolis et oportet et licet inſpicere.* Cod. I. 14. 1.—See alſo, Taylor's *Elements of Civil Law*, *p.* 90, &c.

It is not meant therefore, as is ſaid above, that the Magiſtrate ſhould ever diſpenſe with Law, or act againſt it; but only, that he ſhould, as far as he can, temper it with lenity and forbearance, when the *letter* is found to run counter to the *ſpirit*. For inſtance; our ancient Saxon laws nominally puniſhed theft with death, when the thing ſtolen exceeded the value of twelve pence: yet the Criminal was permitted to redeem his life with money. But by the 9th of Henry I. that is, in the year 1109, this power of Redemption was taken away: the Law continues in force to this very day; and death is the puniſhment of a man, who ſteals above twelve-pennyworth of goods, although the value of twelve pence now is near forty times leſs, than when the Law was made. Here the *ſpirit* is abſolutely outraged by the *letter*: and therefore might not a Juſtice, when a delinquent of this ſort is brought, endeavor to ſoften

Country; a love of juſtice; and a ſpirit of moderation. But, Gentlemen, there are ſtill a kind of *Secondary* or inferior qualities, without

ten the rigor of this Law; or rather to evade it, by depreciating the value of the thing ſtolen, by ſuffering the matter to be compromiſed between the parties, and, where the character of the offender will admit of it, inſtead of purſuing the ſeverities of *Juſtice*, by tempering the whole procedure with *Mercy*?—This and ſuch like modes of acting may be ſaid indeed to be ſtraining points; but, unleſs ſuch points be ſtrained occaſionally, Magiſtrates muſt often act, not only againſt the *ſpirit* of the Laws, but againſt the dictates of reaſon, and the feelings of their own hearts.—Sir Henry Spelman took occaſion from this law to complain, that "while "every thing elſe was riſen in its value, and "become dearer, the life of man had continu-"ally grown cheaper." *Gloſſary*, 350.

Forteſcue has a remarkable paſſage concerning this law. "The Civil Laws, ſays he, where "a theft is manifeſt, adjudge the Criminal to "reſtore fourfold; for a theft not ſo manifeſt, "twofold: but the Laws of England, in either "caſe, puniſh the Party with death, provided "the thing ſtolen exceed the value of twelve "pence." *De laud. leg. Angliæ*, cap. 46. But,

out the cultivation of which he will be far from being ſo perfect, as I at preſent mean to repreſent him.—To *decide* according to right *with preciſion and accuracy*, is the grand point, to which all his endowments, natural and acquired, muſt be directed; and he, who has attained this, may truly be ſaid to have attained every point: *omne tulit punctum*. But in order to *decide with preciſion and accuracy*, a man muſt *hear with affability*, as well as *examine with deliberation*.

Affability and patience.

1. He ſhould *hear with affability*; leſt by a ſhortneſs and impatience

is not this compariſon between *Civil* and *Engliſh* Law aſtoniſhingly made by a man, who was writing an apology for the latter againſt the former? What?—is it nothing to ſettle a proportion between Crimes and Puniſhments? and ſhall one man, who ſteals a pullet worth thirteen pence, be deemed an equal offender againſt Society, and ſuffer the ſame puniſhment, with another, who plunders a houſe of thouſands, and murders all the family?—

of

of behaviour he confound and bewilder thoſe, who come before him. Not that every forward prater ſhould be ſuffered to ſpeak when he pleaſes, and as long as he pleaſes; but, a clear and prompt communication of ideas being by no means the talents of the uneducated and unlearned, with whom he will chiefly have to do, all poſſible indulgence ſhould be granted, and a full privilege allowed of ſetting forth their meaning. This is indeed no more than common juſtice; and as Cicero ſays, "let "us remember to do juſtice even "to the loweſt of the people[c]." —But, while I plead for patience, and gentleneſs, and affability, I mean not to diminiſh from that firmneſs, reſolution, and unſhaken ſtability of ſpirit; without which the authority of this Magiſtrate

[c] *Meminerimus autem, etiam adverſus infimos juſtitiam eſſe ſervandam.* De Offic. I. 13.

would, I am ſure, be very ill ſupported.

Deliberation. 2. He ſhould *examine with deliberation:* for with all his care and circumſpection he will in ſome Caſes find it hard to come at the Truth. Fallibility and Error, he ſhould remember, are the lot of Human Nature; and ſuch is the weakneſs and ſhort-ſightedneſs of our faculties, ſuch the perplexedneſs and obſcurity of things, that, while the multitude blunder, like ſo many blind horſes, along the broken roads and intricate mazes of life, the few wiſe are ſcarce able to walk with any tolerable degree of ſteadineſs and ſecurity. We are told by great authority, that the *beſt* man alive *ſins* ſeven times a day: and I am almoſt tempted to ſay, that the *wiſeſt* man alive *errs* ſeven times a day. Manifeſt as this is to all who obſerve, we daily meet with men, and (as one would

would think) obſerving men too, who are conceited, warm, impetuous, raſh; who are as poſitive in their manners, as dogmatical in their opinions, and as ſudden in their deciſions, as if they ſaw through every thing at a glance, and knew themſelves to be altogether infallible [d].

Now, Gentlemen, when this unfortunate combination of qualities happens to poſſeſs the Magiſtrate, what is it, I pray, that we can reaſonably expect from him? Can we expect Law, or Equity, or Wiſdom, or Moderation? Nothing like theſe, be moſt aſſured; nothing but noiſe, and bluſtering, and overbearing; nothing but

[d] "Whoever recollects, ſays *Montaigne*, "how very many times his own judgment "has deceived him, is he not a fool, if he does "not ever after diſtruſt it?"——

Ergo exploranda eſt veritas multum prius,
Quam ſtulta prave judicet ſententia.

PHÆDRUS.

vague, and ſuperficial, and abſurd harangue: while the poor aſtoniſhed peaſant, bewildered with words, and terrified by authority, humbly and implicitly ſubmits all to the good will and pleaſure of his *Worſhip*; who probably decides from prejudice and paſſion, leaving Law and Equity to ſhift for themſelves. For how is it poſſible, that a man ſhould *decide* rightly, and with *preciſion and accuracy*, who has neither *heard* with *patience*, nor *examined with deliberation*?

Keeping within the bounds of his Office.

3. A Juſtice of the Peace ſhould be careful to *keep within the bounds of his Office.* Whatever fondneſs he may have for the exerciſe of his power, he will always find objects enough to ſatisfy this fondneſs, without ſallying out beyond his Lines[c]. My meaning, Gentle-

[c] Why I inſiſt more particularly upon this quality in a Juſtice of the Peace, will be farther ſeen under his next qualification.

men,

men, I believe, is very clear; yet give me leave for once to explain myſelf by an inſtance. Suppoſe, Gentlemen, two reſpectable matrons, ſuch as uſually reſide in the ſuburbs of a village, ſhould, by any accident unforeſeen and much to be lamented, happen to have a *fracas*, that is, in plain unaffected Engliſh, to quarrel; and this, Gentlemen, becauſe the one hath inadvertently charged the other, either with indelicacies offending againſt chaſtity, or with ſmall deviations from the rigid rules of temperance, or with freedoms taken with certain utenſils and inſtruments of fencing, very well known by the names of ſtoops and rails, or with any thing elſe, Gentlemen, which may deface and tarniſh a character hitherto unſpotted;—I hold this to be a caſe, which, of however unwarrantable and criminal a kind, yet does not

belong to the Magiſtrate in queſtion. " I do not find it any where " clearly ſettled, ſays *Dr. Burn*, " how far ſlander or ſcandalous " words are cognizable before " Juſtices of the Peace.—If they " do not tend directly to a breach " of the King's peace, but are " matters only of private ſlander " between party and party, which " no way affect the public ad- " miniſtration of juſtice, as in " caſe where the common people " are wont to call one another " knaves, and rogues, and whores, " and thieves, I do not find it " aſſerted by any good authority, " that Juſtices of the Peace have " any juriſdiction at all in ſuch " matters: but the proper remedy " ſeems to be in one of theſe two " ways; either by a Proſecution " in the Spiritual Court, or by " an action upon the Caſe at Com-

" mon

" mon Law [f]." If therefore any Juſtice of the Peace ſhall interfere with ſuch litigious altercations, if he ſhall preſume to grant warrants [g], if farther he ſhall impoſe fines upon the Parties offending, under pain of impriſonment, in caſe of non-payment; ſuch a one, I ſay, will manifeſtly tranſgreſs the bounds of his Province. —By ſuch a procedure too he will encroach upon another qualification, which every body will require in him: and that is,

4. A *compoſing, pacific Spirit*; for, Gentlemen, I preſume it to be implied in the Commiſſion, al- *A compoſing, pacific Spirit.*

[f] Burn, IV. 181.

[g] " If a Juſtice grant a warrant in a caſe " wherein he hath no juriſdiction, or in a " matter whereof he hath no cognizance, the " Officer ought not to execute ſuch warrant. " Thus, if a Juſtice ſend a warrant to a Con- " ſtable to take up one for ſlander or the like, " the Juſtice hath no juriſdiction in ſuch caſes, " and the Conſtable ought to refuſe the exe- " cution of it." Wood's *Inſtitute*, I. 7.—alſo Burn, III. 28.

though

though it may not be expreſſed, that it is as much his duty to preſerve the Peace while it is whole, as to reſtore it after it is broken. But to liſten to every impertinent ſquabbler or reſtleſs termagant, and to grant warrants upon all occaſions and none, is not certainly the way to do this. An eaſineſs and facility in granting warrants, far from keeping the peace, has plainly a tendency to break it. It manifeſtly nouriſheth a ſpirit of litigiouſneſs and diſcord among the common people; who, knowing they can be encouraged, where they ought to be reprimanded, fly directly to a Juſtice, every time their paſſions are moved; more indeed to gratify theſe paſſions, and to purſue a principle of reſentment againſt each other, than for redreſs of any real grievances.

In the mean time, while I cannot allow this Magiſtrate to act authoritatively and *ex officio* in caſes, which

which fall not within his juriſdiction; yet as a maker of peace, where the Parties at variance refer themſelves to him, far from reſtraining, I even exhort him to act. His influence muſt avail much. He may compoſe differences; he may prevent lawſuits; he may preſerve a general peace and quiet in his neighbourhood. Nor need the Gentlemen of the Law to be alarmed, like *Demetrius* of old, as if by this *their craft would be in danger*. The human paſſions, they may be moſt aſſured, will always find them work enough, in ſpite of all that this Magiſtrate can do to prevent it.

An abſtinence from gain.

5. The laſt qualification, Gentlemen, which I ſhall aſſign to the office of a Juſtice of the Peace, is *an entire and rigid abſtinence from* every thing, that bears even the moſt diſtant appearance of *profit* to himſelf. I ſpeak not here of men,

men, whom I ſuppoſe ſeducible by bribery and corruption, to pervert the courſe of juſtice: **God forbid, that ſuch villains ſhould ever find their way into any Commiſſion**: but I ſpeak of thoſe, who may think no great harm in making the advantages, that offer in the common courſe of this occupation. It is impoſſible for a Juſtice to produce the full and ſalutary effects of his Office, without poſſeſſing the eſteem and confidence of the neighbourhood, in which he lives: but it is impoſſible to obtain this eſteem and confidence, without being altogether diſintereſted, totally free from every bias, and of hands and heart perfectly pure. I know indeed, that *fees accuſtomed* and *coſts limited by Statute* are mentioned and allowed of in the Oath of office[h]: but, Gentle-

[h] The office of Juſtice ſeems likely to undergo the ſame fate with that of Coroner. The latter was formerly of great eſtimation; ſince

Gentlemen, as far as yourſelves are concerned, touch them not: make an open, a ſolemn, an abſolute renunciation of them all; and avoid as much as poſſible, not only the crime, but even the very ſuſpicion, of gain [i].

If peradventure it ſeem hard, that men ſhould thus devote their

ſince none could have it under the degree of a Knight. 3 Edw. I. c. 10. No Coroners then would condeſcend to be paid for ſerving their country; and they were by the Statute juſt cited forbidden to take a reward, under pain of great forfeiture to the King. But for many years paſt they have only deſired to be choſen for the ſake of their perquiſites: being allowed fees for their attendance by the Statute 3 Hen. vii. c. 1. of which Lord Coke moſt heavily complains, although theſe fees ſince his time have been much enlarged. This change in this ancient and reſpectable Office, Judge Blackſtone imputes "to the culpable "neglect of Gentlemen of property, who ſuf-"fered it to fall into diſrepute, and to get into "low and indigent hands." *Commentaries*, i. 347, 348.

[i] It is not here meant to debar the Clerks from their juſt and lawful perquiſites: care however is to be taken, that no exactions be made in their department, any more than in their Maſter's.

time

time and labour to their country, without the leaſt conſideration of advantage to themſelves; all I can ſay is, that, if the reſpectableneſs of the office itſelf, the eſteem and confidence of all honeſt men [k], and the conſciouſneſs of being perpetually employed in *doing good*, be not thought by any perſons reward ſufficient, I would adviſe ſuch by no means to undertake it. And, Gentlemen, I adviſe this alſo for the ſake of the Public: being thoroughly perſuaded, that men, who have not greatneſs of ſoul, liberality of ſpirit, and delicacy of ſentiment enough to feel the ſweets of ſuch a reward, will never execute this office with that dignity, credit, and authority, which muſt

[k] *Honeſt* men: for this magiſtrate, being particularly a *terror to evil doers*, muſt naturally expect ill-will and ill language from their quarters. But ſhould he not rejoice, and even glory, in this? or would he rather have the good-will and good-word of men, whoſe Panegyric would be more diſgracing than the ſevereſt ſatire?

always

always accompany a due and proper diſcharge of it.

Thus, Gentlemen, I have ſketched the outlines, or rather given a rough draught, of ſuch a kind of perſonage, as, according to my beſt conception, a *Juſtice of the Peace* ſhould endeavour to be. I have pointed to the *Origin* of his Office; have defined, in a general way, the *Nature*, *Extent*, and *Limits* of it; and (what I had principally, indeed ſolely, in view,) have inſiſted upon the *Qualifications*, neceſſary to diſcharge it laudably. And, Gentlemen, if I have uſed ſome plainneſs and freedom in doing this, the reaſon is, that, happening myſelf to be a Party concerned, I thought it would not become me to be mincing and reſerved. I have deſcribed, in brief, the *perfections* and *imperfections* of this ſubordinate Magiſtrate. I ſhould be ſorry to have it imagined, that I pretend myſelf

myſelf to any thing more [1], than every man of a reaſonable and tolerably improved underſtanding may pretend to: for I really and moſt unaffectedly do not: but I herewith pledge my word and honor, that, whenever my own humor, or any particular ſervice I may be able to do my neighbourhood, ſhall call me forth into action, I will attain the *one*, and eſchew the *other*, as far as the meaſure of my abilities will permit.

I have the honour to be,

Gentlemen,

Your very humble ſervant,

A Commiſſioner of the Peace.

[1] *Hoc, quòd complector tantam ſcientiam vimque ingenii, non modo non pro me, ſed contra me eſt potius: non enim, quid ego, ſed quid* Irenarcha *poſſit, diſputo.—Nam ſemper, quacunque de arte aut facultate quæritur, de abſoluta et perfecta quæri ſolet.—Atque ego in ſummo* Irenarcha *fingendo talem informavi, qualis fortaſſe nemo fuit.* Cicero *de Orat.* III. 20, 22. and *Orator.* §. 7.

POSTSCRIPT.

IT has often been affirmed, and with airs of high concern, that there is no nation upon the Globe, better provided with laws than the Engliſh; nor any, whoſe laws are more looſely and negligently executed. The cenſure, implied in the latter of theſe propoſitions, is uſually levelled at the Juſtice of Peace; and it is levelled, as I have always obſerved, with ſome degree of peeviſhneſs and warmth: "better," it is ſaid, "to have no laws at "all, than to have laws of no effect[a]." Now I humbly conceive, that this Magiſtrate is here blamed for neglecting, what it is not in his power to perform; and I will throw together a few thoughts, juſt to point out, that he really is ſo. They

[a] ——— *fruſtra interdicta quæ vetuerant cernentes, nullas potius, quam irritas, eſſe leges maluerunt.* Plin. Nat. Hiſt. xxxvi. 3.

are intimately connected with the ſubject of the foregoing addreſs; and will make, as is preſumed, no improper ſupplement to it.

I ſay then, that if this cenſure of negligence be traced to its origin, it will be found to ariſe from a very common indeed, but moſt aſſuredly miſtaken, ſuppoſition, that Laws are ſufficient to controul and govern Manners: whereas it is certain, that the very reverſe is true, and that Manners will always controul and govern Laws. And this will beſt appear, not by ſubtle, refined, abſtracted reaſonings, drawn from the frame and ſtructure of Man, which might only ſerve to puzzle and perplex; but by appealing in a plain way to the experience of ages, and to the teſtimonies of Legiſlators and Stateſmen.

When it was inſinuated to Solon, that he had not given the Athenians ſo good laws as he might have done, that wiſe and reſpectable perſon anſwered, "I have given "them the beſt, they were able to bear [b]."

[b] Plut. *in Solon.*

Belle parole! "a fine obſervation," ſays Monteſquieu, "and which ought to be perfectly underſtood by every Legiſlator[c]." Certainly: how elſe will he be able to adapt his Means to his End? Laws, to produce their effects, muſt, like all other things, be fitted to their objects. Would you tame a wild animal from the deſerts of Africa, you would doubtleſs adapt your *manege*, as nearly as you could, to the nature of the beaſt you had to deal with. The Human is reckoned by ſome the wildeſt of all beaſts: but, wild or tame, why not treat him according to his nature, and according to the ſituation he may happen to be found in?

A Legiſlator therefore, who knows what he is about, who takes aim, as they ſay, and does not mean to bolt at random, will not retire into his cloſet, and there feign abſtract and ideal ſyſtems of Laws and Government[d]; but he will look abroad, exa-

[c] L'Eſprit, *liv. xix. ch.* 21.

[d] Theſe Syſtems have been called *Utopian*, and they have been called ſo very truly; for they never did, and never can, exiſt out of the imagination, which formed them.

mine and contemplate well the materials he has to work upon, and direct and regulate all his operations by what he ſees. He will not conſider only what is true, but what is practicable alſo; and, if he cannot make men ſo perfect as he would, he will make them as perfect as he can. When the Dictator Cæſar was projecting a Reformation of abuſes and manners among the Romans, his Counſellor adviſed him, to accommodate his meaſures to their preſent prevailing habits and cuſtoms, and not to think of "recalling them to thoſe ancient "original ſtandards and rigid rules of diſ-"cipline, which in the then degenerate "and corrupt ſtate of their manners, inſtead "of being obſerved, would only be made "a jeſt of[e]:" and who can ſay, that he did not adviſe him well?

Cato, it is well known, did miſchief in the Senate at Rome; and merely from not comprehending this aphoriſm of Solon's.

[e] ——— *non ad vetera inſtituta revocare, quæ jampridem corruptis moribus ludibrio ſunt.* Salluſt. Orat. I. ad Cæſ. de Rep. Ordinanda.

"With

" With the very beſt intentions, and the " cleareſt integrity, ſays Tully, he ſome- " times hurts the Commonwealth." And why? " becauſe he gives his opinion upon " all occaſions, as if he was in the pure " and incorrupt Republic of Plato, and " not amidſt the low and degenerate tribe " of Romulus[f]," But Cato, it is probable, would diſdain to compromiſe the matter, and ſubmit as it were to terms, with vice and immorality. His Stoical humour, ever intent and fixed upon ideas of perfection, (the *firſt beautiful*, I warrant you, and the *firſt good)* would naturally diſpoſe him to reject with horror ſuch a motion as this. Beſides, as with the Stoics there were no degrees of ſinning, but crimes and imperfections, vices and infirmities, were meaſured all by the very ſame ſcale, no great matter could be gained by ſuch an accommodation: for if men were not ſo perfect as they ſhould be, they might, in

[f] ——— *optimo animo utens et ſumma fide, nocet interdum Reipublicæ. Dicit enim, tanquam in Platonis* πολιτείᾳ, *non tanquam in Romuli fæce, ſententiam.* Ad Attic. II. 1.

the eſtimation of theſe Philoſophers, as well have nothing perfect at all.

But theſe are no models for perſons, who mean to live in the world, and to be uſeful in their generation; and happily they may be neglected upon the ſafeſt and ſureſt foundation. For it is remarkable, that even the great Legiſlator of the Jews, though under the direction of God himſelf, did not diſdain to adapt his Inſtitutions to the nature, condition, and manners of the people he had to do with. He gave them, as we are told, *a carnal law; a law of bondage; a yoke, which neither they nor their Poſterity could bear: Statutes which were not good, and Judgments by which they could not live.* And, why did he not give them better laws, and a more perfect ſyſtem? becauſe, as Solon ſaid of the Athenians, they could not bear them. They were therefore relatively the beſt that could be given them. More refined and exalted inſtitutions might have done harm, inſtead of good; might have produced new evils, inſtead of correcting old; and, far from

from making the people better, might in reality have made them worſe.

" It is no inconſiderable part of wiſdom " to know, how much of an evil ought to " be tolerated; leſt, by attempting a degree " of purity impracticable in degenerate " times and manners, inſtead of cutting " off the ſubſiſting ill practices, new cor- " ruptions might be produced.—There is " a time for all things. It is not every " conjuncture, which calls with equal " force upon the activity of honeſt men; " but critical exigencies now and then " ariſe [g]." Theſe are the words of a very able writer: and I would beg leave to recommend them to the notice and conſideration of all, who may feel themſelves animated with a ſpirit of Reformation, in Church as well as State; aſſuring them at the ſame time, moſt unaffectedly and ſincerely, that I am very far from intending the leaſt diſreſpect to conſcientious and well-meaning perſons among either. Ab-

[g] *Thoughts on the Cauſes of the Preſent Diſcontents*, p. 98, 115, 3*d edit.*

ſolute complete Reformation is, humanly ſpeaking, an impoſſible thing. *Particular* cuſtoms may indeed be corrected and amended; but there is an uniform progreſſion of *General* manners, ariſing ſucceſſively from neceſſary cauſes, which are altogether independent of human management: and it is no more poſſible for us to reſiſt this progreſſion of manners, than to ſtop the current of a flowing tide.

And as new Laws cannot be given to a People, which are not ſuited to their Manners; ſo old ones ceaſe to be of force, after any People are grown degenerate and corrupted. "Good laws, ſays Machiavel, can-"not be executed without good cuſtoms and "manners[h]." Inſtead of ſupporting and ſecuring good manners, they cannot even ſupport themſelves, if the manners are become bad. The moſt illuſtrious inſtance upon record to ſhew this is, perhaps, the Cenſorſhip of ancient Rome. I do not ſuppoſe, that a more auguſt Magiſtracy was ever eſtabliſhed in any age or nation; and it

[h] *Diſcors. ſopra Liv.* I. 18.

was eſtabliſhed to deſtroy the corruption of manners. Yet when this corruption became general, the Cenſor loſt his power; and the Cenſorſhip gradually grew obſolete and uſeleſs [1].—Let me juſt aſk, *en paſſant*, whether it can be imagined, that, when a corruption of manners bore down a Roman Cenſor, an Engliſh Juſtice of Peace ſhould be able to ſtand up againſt it?——

The prevalence of Manners over the Laws at Rome was long complained of, before the deſtruction of the Commonwealth. Plautus flouriſhed about a Century and half, before the Civil War broke out between Pompey and Cæſar; yet the manners in his time were ſo notoriouſly degenerate, that he makes even a ſlave to hold the following language:

* ——— *Would to heaven!*
That the old manners and the ancient thrift
Were held in greater honour now-a-days,
Than the baſe faſhion of our times.——

[1] Monteſquieu, *L'Eſprit*, xxiii. 21.

* Atque utinam veteres mores, vetereſque parſimoniæ, Potius majori honori hic eſſent, quam mores mali.

—*Manners*

* * * * * *

——*Manners now teach us*
To do what beſt we like, not what is right.
Ambition now is ſanctified by manners,
Freed from the Law's reſtraint.——

* * * * * *

——*Theſe manners have o'erpowered*
The Laws themſelves, and held them in ſubmiſſion.

——*The poor Statutes*
With iron nails are fixed againſt the walls:
But it were better our degenerate manners
Were ſtuck up in their ſtead.——

* * * * * *

——*Nothing now requires*
The ſanction of the Laws: for theſe are bent
In pliable ſubjection to our Manners:
Which in their wild career deſtroy, confound
All ſacred and all public rights.——

THORNTON.

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* * * * * *

Nunc mores nihil faciunt quod licet, niſi quod lubet,
Ambitio jam more ſancta 'ſt: libera eſt legibus.

* * * * * *

Mores leges perduxerunt jam in poteſtatem ſuam.
Eæ miſeræ etiam ad parietem ſunt fixæ clavis ferreis,
Ubi malos mores effigi nimio fuerat æquius.

* * * * * *

Neque quicquam lege ſanctum 'ſt: leges mori ſerviunt.
Mores autem rapere properant, qua ſacrum, qua publicum.

Trinummus, Act. IV.

But

But manners, it ſeems, were not content with triumphing over Laws: they extended their baneful influence to even Arts and Sciences, by generating a falſe taſte, which prevailed againſt all the rules of juſtneſs and beauty. Of this the ancient artiſts complain frequently and heavily. "Painting, ſays Vitruvius, with whatever "artificial elegance it may be finiſhed, "can never be approved, unleſs it imi-"tates Nature and Truth.—But the ge-"nuine models of Græcian Art, and what-"ever we have in this way, are now re-"jected by our fantaſtic and corrupt man-"ners. For, inſtead of images deſigned "from real nature, you may ſee painted "upon our Walls and Ceilings Monſters "rather; things, which do not, never "did, never can, exiſt." And after having ſpecified ſeveral of theſe Monſters, he goes on: "thus therefore our new "and wretched manners have compel-"led," &c. [k] It is eaſy to conceive, what this

[k] *Neque enim picturæ probari debent, quæ non ſunt ſimiles veritati,*

this ancient artiſt would have ſaid to our preſent prevailing taſte for the Chineſe.

Letters ſuffered alſo from the general contagion. The Rhetor in Petronius defends his brethren, for inculcating falſe taſte, and teaching a ſpurious eloquence: "they are not at all to blame, ſays he, for ſo "doing; it being neceſſary to rave with "thoſe that are mad." — But why ſo? why not attempt to reſtore them to their ſenſes? to bring them back by ſound and wholeſome criticiſm to a true and natural reliſh? — Becauſe the thing was deemed impoſſible: becauſe no authorities, no laws, could withſtand the prevailing taſte and manners; and becauſe, "if they had "not conformed to the humour of their "Scholars, they might have ſat in their

veritati, nec ſi factæ ſunt elegantes ab arte.—Sed hæc, quæ a veteribus ex veris rebus exempla ſumebantur, nunc iniquis moribus improbantur. Nam pinguntur tectoriis monſtra potius, quam ex rebus finitis imagines certæ.—Hæc autem nec ſunt, nec fieri poſſunt, nec fuerunt.—Ergo ita novi mores coegerunt, &c. De Architect. VII. 5.

Schools

"Schools alone."[1] And the Philoſopher Taurus, in Aulus Gellius, complains, that "Scholars gave the Law to their Maſters, "and would philoſophize only according "to their own taſte and ſtile: *legem* "*etiam dant, qua philoſophari diſcant.*"[m]

From this curſory glance upon the States of Greece and Rome, we may eaſily perceive, that Laws can never avail againſt Manners: can never be executed, or preſerve the leaſt force, while Manners bear ſtrongly and powerfully againſt them. In ſhort, Manners conduct and decide the fate of Empires: they ſave, and they deſtroy: and it is owing to *Their* particular or ſpecific ſtate, if I may ſo ſay, that the very ſame acts or meaſures ſhall effect either the one or the other. The Tarquins were expelled, and Rome reſumed her liberty:

[1] *Minimum in his exercitationibus doctores peccant, qui neceſſe habent cum inſanientibus furere. Nam, ni dixerint quæ adoleſcentuli probent, ſoli in Scholis relinquentur.* Satyric. ſub init.

[m] *Noct. Attic.* I. 9.

Cæſar

Cæſar was deſtroyed, and Rome proceeded to bondage. Why? "becauſe the Manners "were pure under the former, corrupt "under the latter." Machiavel notes the caſe, and accounts for it thus. [n] — One trembles to criticiſe the motives, which determined ſuch men as Cicero and Brutus: yet, is it not wonderful they did not foreſee, that all attempts to preſerve the Commonwealth muſt be vain and fruitleſs? It was not Cæſar, but the Roman Manners, which brought about its deſtruction [o]. But perhaps they did foreſee it, and bravely reſolved not to ſurvive this deſtruction.

I ſhould be ſorry to find excuſes for corrupt and wicked Stateſmen; but ſurely Stateſmen, no more than other men, can act invariably and always, as they would: even they, as well as inferior Magiſtrates, muſt be more or leſs governed by the Manners that rule. "The

[n] *Diſcors.* I. 17.

[o] *Liberty*, ſays Algernon Sidney, *cannot be preſerved, if the Manners of the People be corrupt.* On Government, ch. II. 3. 25.

"miſ-

"miſconduct of Politicians, ſays Mon-
"teſquieu, is not always voluntary; but
"happens frequently to be the unavoid-
"able conſequence of their particular ſitu-
"ation [p]." He alludes, no doubt, to *particular* meaſures in certain critical conjunctures: but the obſervation muſt hold, in ſome degree at leaſt, when applied to the *general* ſyſtem of governing. It is common, and ſometimes right, to blame individuals, when things go wrong: but it is not always ſo; for the Stateſman is often carried with the ſtream, and obliged to act, not as he would, but as he can. Manners, in their progreſſion, gradually change the face of things: Human Nature, ſucceſſively, aſſumes new and different modes: and theſe different modes, by a kind of neceſſity, generate and introduce new and different principles of policy, new and different ſyſtems of Government. [q] The fall of

[p] *Grand. des Rom.* ch. 18.

[q] Though the above obſervations may ſometimes ſerve for an

of the Roman Commonwealth cannot juſtly be charged upon any ſingle perſon: for, in effect, Cæſar was nothing more than the Inſtrument; the Means, if I may ſo ſay, to conduct the People to that Point, to which their Manners had long and forcibly tended. No: it was a *general* cauſe, a *general* corruption of Roman Manners, (and let Britain deprecate the omen) which worked the deſtruction of Roman liberty:

Hoc fonte derivata clades
In patriam populumque fluxit.

Horat.

Shift we now the ground, and from ancient theatres deſcend at once to modern; to that particularly on which we act, and with whch alone we are at preſent concerned. Now, without rambling vaguely over an

an excuſe to the Stateſman, when applied to *general* meaſures; yet they can never be urged, without much effrontery, for direct attacks upon the Conſtitution, and the barefaced violation of *particular* laws; ſuch as we read of in the reign of James II.

immenſe

immenſe field, which lies expanded before us, let us confine ourſelves to a general ſurvey of three or four Acts of Parliament, which ſolely reſpect Manners: for theſe will ſuffice to ſhew, what cannot well be repeated too often, that Laws will be of little or rather no efficacy at all, when they contradict too directly the Manners of a People.

By a law, enacted in the Second year of George the Second, Common Swearing is forbidden, as being juſtly deemed the mark of a very profligate or a very fooliſh ſpirit: and the delinquent is fined, according to the rank he holds in Society. But is the practice of it ſuppreſſed, or even curbed? Nay, can any thing prevail more univerſally? and is it poſſible to ſtir out, without having our ears every moment annoyed with it? Very true: but the reaſon is, that the Juſtice of Peace, who has the care of this as of almoſt all other Statutes, will not put it in execution. Say you ſo? Well then,—let us ſuppoſe this Magiſtrate, with half a ſcore of ſetters or informers, marching forth upon a Viſitation in his diſtrict, with

a determined purpoſe to execute this law againſt all, gentle as well as ſimple, who ſhall be found to offend againſt it:— I am obliged to march him out, becauſe, unleſs *per accidens*, no information will ever be brought home to him——I aſk now, what reception he would meet with, and what amendment he would work? He would be deemed an officious, troubleſome, impertinent perſon: he would be abuſed, inſulted, hated: and, as to reformation and amendment, he would infallibly promote the crime, he was endeavouring to correct. He has indeed Law to ſupport him, and Goſpel too, if that could do any good: but —*leges moribus ſerviunt*—the Laws muſt give way to Manners: Licentiouſneſs is eſtabliſhed, and Profligacy triumphant. So, by an ordinance in 1650, when the Righteous ruled the Land, it was made felony in both ſexes, without benefit of Clergy, to commit Adultery or Fornication: but Laws, made againſt Manners which will always prevail, of courſe repeal themſelves; and for this particular ordinance, as one pleaſantly obſerves, "it could not have conti-

"nued

"nued long unrepealed, even if Charles "the Second had not ſucceeded to the "Throne".[r]

The Acts of Parliament, relating to Alehouſes and Tipling, are very explicit, preciſe, and ſtrong: and they are too well known, to need to be enlarged on. But, is it poſſible to put theſe Acts in execution? Shall every man be fined, who is known to get drunk; and every Ale-ſeller deprived of his Licenſe, who may happen to ſuffer irregularities in his Houſe? Not only the Manners, but the very Police, of the Country would oppoſe this. It is believed with good reaſon, that the Juſtice of Peace cannot, in any ſingle branch of his Office, ſerve his neighbourhood more effectually, than by paying a rigid attention to theſe ſort of Houſes, they being indiſputably the grand ſources of corruption and debauchery in our villages; and this attention is frequently inculcated by the Judge from the Bench. Yet, ſhould the Magiſtrate proceed, as the Statute directs, againſt one of

[r] Barrington's *Obſervations on Ancient Statutes*, p. 125. 3d edit.

theſe Houſes, though ever ſo notoriouſly and ſcandalouſly diſſolute, the very loweſt Officers of the Exciſe would inſtantly erect themſelves in oppoſition to him. They would abet the Ale-ſeller, with the uſual inſolence of their office; would be ready to gauge the unlicenſed caſk; and plume themſelves perhaps as better friends to Government for ſupporting its revenue, than this Magiſtrate, whoſe procedures have a tendency to diminiſh it.*

It is pleaſant enough to conſider, that, while Government is making Laws for the preventing of drunkenneſs, theſe little officious Miniſters of it are promoting drunkenneſs, for the righteous purpoſe of ſerving Government. But I have really ſeen the thing happen; and it brought to my mind an affair of a ſimilar kind, related by Dr.

* Mandeville was abuſed for writing a book to ſhew, that *Private Vices were Public Benefits*: that is, that a corruption of manners, though pernicious to Individuals, might yet be ſerviceable to the State. The caſe however before us, Lotteries which foment and cheriſh a ſpirit of Gaming, and other inſtances of a ſimilar nature, may ſerve to excuſe this writer for making a propoſition *general*, which is only true in *particular* caſes.

Giles

Giles Fletcher, who was in Ruſſia towards the end of Queen Elizabeth's reign. This traveller, ſpeaking of the many wicked and barbarous arts, which were uſed by the Czars to drain and oppreſs their people, ſays, that "in every great town the "Emperor hath a drinking houſe, which "he lets out for rent. Here labourers and "artificers many times ſpend all from their "wives and children. Some drink away "every thing they wear about them, even "to their very ſhirts incluſive, and then "walk naked: all which is done for the "honour of the Emperor. Nay, while "they are thus drinking themſelves naked, "and ſtarving their families, nobody muſt "call them away upon any account, be-"cauſe he would hurt the Emperor's reve-"nue." [t]

Duelling is another good inſtance, to ſhew the prevalence of Manners over Laws. "The Law, ſays Mr Hawkins, ſo far ab-"hors duelling, that not only the Princi-"pal, who actually kills the other, but "alſo his Seconds are guilty of murder,

[t] Cato's Letters, II. 326.

" whether they fought or not: " [u] and the punishment of course is death. But, in spite of this sanction, strong and powerful as it is,—is not the age of Quixotism coming on again? Does not the humour Rodomontade prevail among the Great; and is it not creeping down, even to Apprentices and Attorney's Clerks?—I called it Quixotism: and surely I had reason. Observe the manners of our present Duellists: weigh the principles they go upon: attend to the ceremonial of their engagements: and tell me then, if any adventures of the famous Knight of la Mancha are built upon a more foolish foundation, and accompanied with more solemn yet more ridiculous rites, than theirs.

Perhaps a stronger instance cannot be brought, than this before us, to shew the prevalence of fashion, not over Laws only, but over Sense, and Reason, and Equity, and Humanity. The Duellist is never an amiable, and oftentimes a very bad, composition: but he has *Honour* for his sanction and support; *Honour*, all-powerful *Ho-*

[u] 1 Hawk. P. S. 82.

nour;

nour: and this vain, unmeaning, empty word,—this *fine imaginary notion,* as Syphax truly calls it,—is, through the prevalence of faſhion, ſufficient to preſerve him upon terms with Society, and to ſecure his reception as uſual amongſt Gentlemen. Would you know how? why, *(credite, poſteri!)* by ſupplying the want of perhaps every accompliſhment, as well as every virtue.

Let me ſubjoin a paſſage from an excellent writer; which, while it animadverts upon this *particular* inſtance of Britiſh manners, will ſerve to confirm our *general* poſition. "No Law will, or ever can, be "executed by inferior Magiſtrates, while "the breach of it is openly encouraged by "the examples of *ſuperior.* Does any man "think, that the beſt laws againſt *Duel-*"*ling* would have any effect, if there was "at the ſame time a *Duelling* office kept "open at St. James's? The example of "thoſe, who ſhould execute laws, or ſee "them executed, is ſtronger than the au-"thority of thoſe, who make them. The "example of Veſpaſian did more towards

" the reſtraint of luxury, than all the ſump-
" tuary Laws of Rome could do till his
" time; for, ſays Tacitus, " *a complaiſance*
" *towards the Prince, and a ſpirit of rival-*
" *ſhip in imitating his manners, were of far*
" *more force, than any dreaded puniſhment*
" *from the Laws.* [w]

I will cite but one inſtance more; and that ſhall be the Act, to prevent bribery and corruption in electing Members of Parliament, paſſed in the year 1729. It ſhould ſeem, that no Statute was ever better guarded, and enforced with ſtronger ſanctions, than this. The Elector ſwears, that he has not received any thing, directly or indirectly, in one ſhape or other, in order to give his vote: the Sheriff or other returning Officer, admitting any to be polled before ſworn, forfeits £. 100: the Elector, taking money or reward for his vote, forfeits £. 500; as doth the Candidate who gives it: and both are for ever diſabled to vote in any future Election, and to enjoy

[w] *Præcipuus adſtricti moris auctor Veſpaſianus fuit, antiquo ipſe cultu victuque. Obſequium inde in Principem, et æmulandi amor, validior quam pœne ex legibus et metus.* Annal. III. 55.

any

any Office or Franchiſe, as a Member of any City, *&c.* as if ſuch Perſons were naturally dead. This, one would think, was ſecurity enough, if any thing could be, againſt bribery and corruption in all ſuch caſes: yet, what has been the effect? Every body knows: every body knows, that bribery and corruption have been practiced ever ſince, and are now avowed without reſerve or diſguiſe.

The Miniſter, againſt whom this Act was levelled, was ſuppoſed to pack his Parliaments, and to carry all his meaſures by the ſingle expedient of corruption. At firſt indeed he oppoſed it; but, ſoon dropping oppoſition, he affected to co-operate with thoſe, who were for it. Aware of the no-effects it would have, the Miniſterial writers of thoſe days ridiculed it under the name of *the golden dream*: [x] and doubtleſs the Miniſter laughed at it himſelf; for he abounded with pleaſantry, and was of an humor to laugh. He was not learned; and it may be never heard, how Anarcharſis

[x] Craftſman, N°. 313.

laughed

laughed at Solon, for thinking to reſtrain Avarice and Ambition by Laws: [y] but he knew human nature and the World, and ſaw no doubt, as clearly as Anacharſis, how little Acts of Parliament would avail in ſtemming the torrent of popular manners.

Overzealous Reformers, when they ſee crimes committed often and with impunity, are apt to grow angry; they blame the Magiſtrate for negligence: they call aloud for ſeverer laws and more active Magiſtrates. But this appears not unlike to calling for fire down from heaven, and is indeed equally wrong: it being certain, that Good Manners, no more than Good Religion, can ever be propagated by harſh and violent means. Severe laws, inſtead of reforming, would harden a People: they would make them deſperate; and perhaps they might make them rebellious. "It is "a perpetual remark of the Chineſe au- "thors, ſays Monteſquieu, that the more "the ſeverity of puniſhments was increaſed "in their Empire, the nearer they were to

[y] Plut. *in Solon.*

" a Revolution. *The reaſon is*, ſays he, *that* " *puniſhments were augmented, in propor-* " *tion as the public morals were corrupted.*[z]"

In ſhort, to puniſh is to begin at the wrong end. If we would effectually reform a People, we muſt lay a foundation in diſcipline and manners. " Good Man- " ners, ſays Tacitus, did more with the " Germans, than good Laws in other coun- " tries[a]:" and it is well known, that among the Spartans the rigid education of their youth, and the ſacred regard that was paid to Manners, in a great meaſure ſuperſeded the uſe of Laws. The wiſeſt Stateſmen and the ableſt obſervers of human nature have always joined them together, as the only ſolid baſis, on which the well-being and happineſs of a Nation or People can be erected. " There are two " things, ſays Polybius, which are eſſential " parts in every Government; and accord- " ing to which the principles and conſti-

[z] L'Eſprit, VI. 9.—*Videbis ea ſæpe committi, quæ ſæpius vindicantur*, ſays Seneca.

[a] *Plus ibi boni mores valent, quam alibi bonæ leges.* De mor. German.

" tution

" tution of the State itſelf will be found to
" deſerve either praiſe or cenſure. Theſe
" are the *Manners*, and the *Laws*:—and
" when theſe are ſuch, as tend to promote
" the exerciſe of honeſty and virtue, it is
" reaſonable to conclude, that the State it-
" ſelf is virtuous, and the Members of it
" free from reproach; as, on the other
" hand, when an immoderate deſire of gain
" governs the life of every private citizen,
" and the public tranſactions of the State
" are contrary to Juſtice, we may ſafely
" venture to declare, that the laws of the
" Community are bad, the manners of the
" people corrupt and vicious, and the whole
" Government contemptible." [b]

If the reader will now lay together what has been ſaid, he will find good reaſon to conclude, that the Laws, inſtead of controuling and governing Manners, will themſelves be controuled and governed by Manners. I have produced four inſtances, and I might have produced four-ſcore, which plainly ſhew this to be actually ſo;

[b] Lib. VI. Extract 3. *Hampton's Tranſlation.*

namely,

namely, in the laws againſt Swearing, Drinking, Duelling, and Bribing at Elections. It is not however to be ſuppoſed, that theſe laws are never executed: we know that they are: but it is only occaſionally, imperfectly, and (what is quite to my purpoſe) utterly without effect upon the manners they were intended to aboliſh. Theſe then are laws, which a Magiſtrate cannot execute regularly and uniformly, if he would: but there are another ſort of laws, (to ſay a word or two about them) which he ſhould not execute, if he could: I mean, laws which are obſolete; that is, ſtill in force, but out of uſe. By the law of Scotland, a Statute is ſaid to loſe its force by *deſuetude*, if it hath not been put in execution for ſixty years: but the caſe is not ſo with Engliſh Statutes, however obſolete, unleſs they have undergone an actual repeal. [c]

To put ſuch obſolete Statutes in execution, is almoſt always againſt the principles of Reaſon and Equity, and ſometimes

[c] Barrington *on ancient Statutes.* p. 40.

againſt even thoſe of Humanity. In a long tract of years, Matters become diſlocated as it were: the Laws ceaſe, as I have expreſſed it, to fit their objects; and it might often happen, as is before obſerved, that a Statute, from a new and different ſituation of things and perſons, gradually and inſenſibly brought on by courſe of time, would enforce proceedings, not barely different from, but perhaps intirely contrary to, its original intent and meaning. [d]—— Beſides, obſolete Statutes may ſerve, as indeed they have ſerved with bad Princes, for inſtruments of Tyranny. "It was pe-"culiar to Tiberius," as Tacitus informs us, "to conclude lately invented crimes "under ancient laws:" [e] and thoſe very obnoxious Miniſters of Henry the Seventh, Empſon and Dudley, did not become ſo by acting againſt Law, but by reviving old Penal Statutes, and enforcing them with a ri-

[d] Above, p. 32.

[e] *Proprium id Tiberio fuit, ſcelera nuper reperta priſcis verbis obtegere.* Monteſquieu calls "this abuſe of the laws, "one of Tiberius's moſt tyrannical proceedings." *L'Eſprit.* VII. 13.

gour,

gour, which was as grievous and oppreſſive to the Subject, and as much felt and complained of, as if it had been an avowed and deliberate Tyranny. — Upon the whole, obſolete and uſeleſs Statutes, as a judicious writer ſays, "ſhould be repealed; for they "debilitate the authority of ſuch, as ſtill "exiſt and are neceſſary. Neglect on this "point is well compared by Lord Bacon to "the cruelty of Mezentius, who left the "living to periſh in the arms of the dead."[f]

To conclude then. Inſtead of cavilling at this Magiſtrate for what he cannot do, it will be better to take kindly and in good part what he can do. If he acquits himſelf to the beſt of his abilities; if he executes faithfully the laws he can execute; if he protects the rights, and redreſſes the grievances, of thoſe who want protection and redreſs; if he attends to all reaſonable applications; in ſhort, if he is animated with a friendly concern for the well-being of the neighbourhood in which he lives, and performs the buſineſs of it with aſſiduity and

[f] Principles of Penal Laws, ch. 2.

care:

care :—he has a clear and undoubted right, not to indulgence only, but even to commendation and good will. This commendation and this good will are all his reward; all he muſt have for devoting his time and labour to the ſervice of thoſe about him. Formerly, I ſuppoſe, the office of this Magiſtrate was deemed a badge of ſome honour, and an acceſſion of dignity to the man who wore it: but, while the trouble and fatigue of it are increaſed beyond meaſure, the honour is diminiſhed and dwindled to almoſt nothing. And indeed it cannot well be otherwiſe: when the Commiſſions are uſually filled, without any regard to Ability or Character; and we are ſometimes preſented with Perſons, not barely incompetent, but under every conceivable view improper and unfit.

FINIS.

Erratum in Dedication.

P. xxiv. for *contradiſtinguiſhed to each other*, read *qualities very diſtinct.*